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*June 21*

# INDEX DIGEST

OF THE REPORTS OF THE

## UNITED STATES CIRCUIT COURT OF APPEALS

VOLUMES 1-40 C. C. A. AND 1-63 U. S. APPEALS

WITH PARALLEL REFERENCES TO THE FEDERAL REPORTER.

—  
SEPARATE INDEX TO NOTES IN C. C. A. REPORTS.  
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## PREFACE.

**S**OME special features in the indexing of patent and trademark cases herein may deserve particular mention. In the title "Patents," after the index digest of the points of patent law, the last division, "XIX. ENUMERATION OF PATENTS," contains an alphabetical list of the patents, referring both to subjects and to names of the patentees. It includes also a separate list of the patent cases for each circuit. In the title "Trademarks and Tradenames" a special list of trademarks also alphabetically arranged is given in addition to the index digest of the points of trademark law.

C. C. A. Reports are cited without naming them, but by using a colon in place of the usual abbreviation. Thus, "9:501" means Volume 9 C. C. A. page 501. Duplicate references to the Federal Reporter and United States Appeals Reports are in brackets.





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[49 Fed. 259; 4 U. S. App. 98] 1: 241

**APPEAL AND ERROR—continued.**

Failure to fix return day and file order enlarging time.	[70 Fed. 883; 30 U. S. App. 535]	17: 472
Extending after time expired.	[54 Fed. 419; 9 U. S. App. 547]	4: 401
Dismissal for failure to file and furnish to opposite party within time.	[72 Fed. 85; 25 U. S. App. 700]	18: 442

**Amendment of record.**

See also *supra*, **Bill of exceptions.**

Of record and bill of exceptions.	[60 Fed. 197; 13 U. S. App. 597]	8: 558
Preparing; supplying omissions.	[49 Fed. 1; 2 U. S. App. 155]	1: 254
Clerk's right to insert name of party omitted from printed record.	[86 Fed. 517; 58 U. S. App. 604]	30: 235
To correct clerk's mistake.	[66 Fed. 887; 32 U. S. App. 15]	14: 273
To correct clerk's mistake after waiver of irregularity.	[70 Fed. 529; 37 U. S. App. 1, 199]	17: 251
Directing return of exhibits omitted from transcript.	[93 Fed. 615]	35: 487
Adding testimony to bill of exceptions by stipulation after filing.	[94 Fed. 300]	36: 259
Of stipulation waiving jury.	[53 Fed. 758; 5 U. S. App. 240]	3: 644
Of agreement waiving jury, remanding for purpose of.		Id.
Certiorari to supply evidence omitted from record.	[49 Fed. 1; 2 U. S. App. 155]	1: 254
Failure to embody all the evidence, remedy.	[50 Fed. 849; 5 U. S. App. 90]	2: 58
Omissions from transcript by appellant's directions, appellee's remedy.	[51 Fed. 929; 5 U. S. App. 97]	2: 542
	[61 Fed. 237; 21 U. S. App. 50]	9: 468
Certiorari to have additional evidence incorporated in, when denied.	[81 Fed. 1004; 49 U. S. App. 474]	27: 42
By certiorari on <i>ex parte</i> affidavits.	[73 Fed. 23; 41 U. S. App. 117]	19: 353
By direct order without writ of certiorari.	[87 Fed. 168; 59 U. S. App. 274]	30: 594
Cannot be made in appellate court without consent of adverse party.	[89 Fed. 1; 50 U. S. App. 407]	32: 151

**Printing of record.**

Printing of record not dispensed with merely because plaintiff suing in representative capacity unable to pay for.	[90 Fed. 472; 60 U. S. App. 554]	33: 616
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**V. OBJECTIONS AND EXCEPTIONS.**

**Sufficiency—In general.**

Must show that specific question raised on appeal was presented below.	[91 Fed. 213; 50 U. S. App. 461]	33: 456
Objection to notice to produce document because it "does not comply with the statute in some respects" insufficient.	[72 Fed. 294; 36 U. S. App. 534]	18: 570
General exception to general finding involving mixed questions of law and fact.	[91 Fed. 60; 50 U. S. App. 484; 43 L. R. A. 618]	33: 328
General exception to direction of verdict, insufficient.	[91 Fed. 858]	34: 112

**—To evidence.**

Indefinite, not considered.	[54 Fed. 332; 8 U. S. App. 309]	4: 368
Must be specific.	[93 Fed. 737]	35: 562
Must be specific and distinctly indicate ground.	[62 Fed. 139; 22 U. S. App. 325]	10: 306

**APPEAL AND ERROR—continued.**

- General objection to evidence. [82 Fed. 720; 54 U. S. App. 222] 27: 333
- Failure to state ground. [51 Fed. 562; 7 U. S. App. 359] 2: 380  
 [54 Fed. 126; 12 U. S. App. 26] 4: 237  
 [58 Fed. 531; 19 U. S. App. 169] 7: 349  
 [62 Fed. 383; 27 U. S. App. 111] 10: 429  
 [79 Fed. 740; 49 U. S. App. 156] 25: 186
- No ground given for objections to questions on cross-examination. [100 Fed. 415] 40: 465
- Objections to evidence not specifically indicating grounds on which made. [88 Fed. 116; 60 U. S. App. 156] 31: 414
- To admission of evidence, omission of grounds of, curing by statement in assignments. [85 Fed. 806; 57 U. S. App. 306] 29: 634
- Receiving documents in evidence where no ground for exclusion stated in objection. [92 Fed. 479] 34: 479
- Document offered for one purpose, objection because not admitted for another. [59 Fed. 70; 19 U. S. App. 307] 8: 1
- Failure to state purpose of evidence. [58 Fed. 144; 19 U. S. App. 24] 7: 122
- As "incompetent," without stating why. [72 Fed. 294; 36 U. S. App. 534] 18: 570
- As being "incompetent, irrelevant, and immaterial." [60 Fed. 254; 19 U. S. App. 588] 8: 612  
 [66 Fed. 868; 32 U. S. App. 60] 14: 153  
 [79 Fed. 896; 51 U. S. App. 81] 25: 216
- To contract as incompetent and immaterial; waiver of proof of execution. [54 Fed. 890; 14 U. S. App. 15] 4: 648
- General objection that evidence irrelevant or incompetent, not raise question of competency under special form of issues joined. [88 Fed. 630; 60 U. S. App. 253] 32: 67
- Objection to opinion of witness as irrelevant and incompetent, too general. [94 Fed. 320] 36: 364
- General objection to expert testimony; sufficiency to support specific assignment of error. [84 Fed. 430; 51 U. S. App. 693] 28: 443
- To deposition as "improper rebuttal," too broad if any part proper. [74 Fed. 12; 36 U. S. App. 611] 20: 265
- To raise question of sufficiency of evidence to justify submission of particular question to jury. [85 Fed. 417; 56 U. S. App. 355] 29: 239
- General objection to evidence, variance between pleadings and proof. [56 Fed. 778; 9 U. S. App. 537] 6: 114
- Objection to deed because nothing to identify and show title in plaintiff, too general. [68 Fed. 336; 25 U. S. App. 345] 15: 466
- Objection to entire deposition, no exception, secondary evidence. [61 Fed. 874; 27 U. S. App. 49] 10: 135
- To taking evidence for insufficiency of petition. [64 Fed. 103; 27 U. S. App. 458] 11: 507
- Recital of record that party "objected" and "excepted" not sufficient. [56 Fed. 437; 12 U. S. App. 295] 5: 538
- Striking out all of plaintiff's evidence, exception to. [52 Fed. 752; 9 U. S. App. 25] 3: 274
- To instructions given.**
- Indefinite, not considered. [60 Fed. 583; 20 U. S. App. 425] 9: 138
- Instructions not considered when exceptions insufficient. [59 Fed. 707; 20 U. S. App. 296] 8: 224
- Assignment of error not considered when exceptions insufficient. Id.
- Insufficient to call question to attention of trial court. Id.
- Necessity of sufficiently excepting to charge to bring matters objected to, to attention of trial court. [98 Fed. 946] 40: 35
- To instruction, requisites of. [80 Fed. 228; 42 U. S. App. 466] 25: 382

**APPEAL AND ERROR—continued.**

General, to charge.	[61 Fed. 908; 18 U. S. App. 699]	10: 151
	[62 Fed. 232; 8 U. S. App. 597]	10: 352
General, followed by propositions embracing substantially all of the charge.	[62 Fed. 326; 18 U. S. App. 711]	10: 385
In gross.	[50 Fed. 686; 4 U. S. App. 319]	1: 613
To entire charge part of which is good.	[56 Fed. 76; 5 U. S. App. 423]	5: 421
Exception to charge as whole where part correct.	[92 Fed. 321]	34: 369
To entire charge containing correct instruction.	[97 Fed. 150]	38: 89
Exception to entire charge or series of propositions, not sustained if any part sound.	[71 Fed. 93; 36 U. S. App. 229]	18: 114
To portion of charge containing several propositions, some favorable.	[77 Fed. 663; 46 U. S. App. 605]	23: 391
General, to charge containing distinct propositions.	[54 Fed. 474; 10 U. S. App. 629]	4: 447
Referring to charge as a whole, without indicating defects.	[80 Fed. 228; 42 U. S. App. 466]	25: 382
When exception to part of charge relating to particular subject, sufficiently specific.	[92 Fed. 470]	34: 470
To "each and all" of instructions.	[60 Fed. 498; 18 U. S. App. 507]	9: 104
To whole and each and every part.	[53 Fed. 312; 10 U. S. App. 497]	3: 551
General, to long paragraph of charge.	[77 Fed. 138; 40 U. S. App. 382]	23: 89
"To so much of" long charge as is to specified effect.	[77 Fed. 243; 42 U. S. App. 111]	23: 139
Sufficiency of general exception to charge requiring jury to consider outside matters.	[81 Fed. 694; 48 U. S. App. 376]	26: 570
General exception, where all other parts of charge explanatory of direction of verdict.	[98 Fed. 827]	39: 314
To instruction claimed to carry implication beyond what expressed.	[96 Fed. 703]	37: 562
When question as to vice principal or fellow servant erroneously submitted.	[56 Fed. 810; 12 U. S. App. 490]	6: 148
Directly to misstatement of fact, not to entire instruction.	[59 Fed. 70; 19 U. S. App. 307]	8: 1
Calling court's attention to modification of requested charge.	[67 Fed. 659; 33 U. S. App. 147]	14: 609
To instructions, urging objections not embraced in.	[86 Fed. 230; 56 U. S. App. 593]	29: 674
<b>—To instructions refused.</b>		
General, when request is of a general character.	[62 Fed. 227; 8 U. S. App. 618]	10: 347
To refusal to charge whole series.	[50 Fed. 686; 4 U. S. App. 319]	1: 613
Single, to refusal of series of instructions.	[83 Fed. 64; 49 U. S. App. 592]	27: 439
Exception in gross for refusal to charge.	[50 Fed. 686; 4 U. S. App. 31]	1: 613
Exception in gross to refusal of long series of instructions.	[79 Fed. 294; 49 U. S. App. 78]	24: 595
General, to failure to give nine separate propositions.	[82 Fed. 720; 54 U. S. App. 222]	27: 333
General exception to refusal of series of instructions, any of which unsound.	[87 Fed. 127; 59 U. S. App. 718]	30: 575
	[97 Fed. 150]	38: 89
General, to refusal to give series of instructions, bad unless all proper.	[92 Fed. 470]	34: 470
To refusal of "each and all" the instructions requested.	[61 Fed. 908; 18 U. S. App. 699]	10: 151

## APPEAL AND ERROR—continued.

To refusal to give a number except so far as given.

[56 Fed. 76; 5 U. S. App. 423] 5: 421

**Necessity of exceptions.**

Where only question in case one of law.

[90 Fed. 212; 61 U. S. App. 626] 32: 578

To rulings of court.

[73 Fed. 523; 43 U. S. App. 107] 19: 556

[74 Fed. 12; 36 U. S. App. 611] 20: 265

To admission of testimony.

[92 Fed. 470] 34: 470

Jury waived, no exceptions to rulings on evidence or declarations of law.

[59 Fed. 869; 19 U. S. App. 403] 8: 331

[60 Fed. 346; 19 U. S. App. 567] 8: 658

When jury waived, court makes mere general findings, no exceptions to rulings.

[74 Fed. 917; 41 U. S. App. 181] 21: 177

To charge of court.

[64 Fed. 667; 29 U. S. App. 32] 12: 451

[87 Fed. 127; 59 U. S. App. 718] 30: 575

To instruction given or refused before jury retires.

[90 Fed. 57; 61 U. S. App. 124] 32: 507

To declaration of law opposite to request made, when refusal of request excepted to.

[86 Fed. 574; 57 U. S. App. 546] 30: 260

Necessity of exceptions to review question whether findings of fact support conclusions of law.

[76 Fed. 359; 40 U. S. App. 312] 22: 223

Necessity of request for and exceptions to special findings.

[75 Fed. 852; 43 U. S. App. 698] 21: 538

To questions involving correctness of master's findings.

[91 Fed. 574; 63 U. S. App. 455] 34: 15

To ruling on motion to vacate judgment and verdict.

[98 Fed. 811] 39: 308

Report of master in absence of exceptions.

[81 Fed. 907; 53 U. S. App. 414] 26: 675

Errors in commissioner's report not excepted to below.

[59 Fed. 483; 16 U. S. App. 577] 8: 188

Necessity of having conclusions of law separately stated, and of excepting to them.

[75 Fed. 852; 43 U. S. App. 698] 21: 538

**Time for exceptions.**Time for objecting to joinder of suit *in rem* and *in personam*.

[72 Fed. 79; 44 U. S. App. 96] 18: 373

Testimony admitted on promise to connect.

[59 Fed. 879; 21 U. S. App. 24] 8: 341

Subsequently calling up and excepting to matter admitted subject to objection.

[92 Fed. 470] 34: 470

Failure to take seasonable exceptions to rulings on evidence.

[85 Fed. 957; 52 U. S. App. 695] 29: 504

To charge.

[52 Fed. 94; 2 U. S. App. 342] 2: 633

To instructions given or refused.

[76 Fed. 930; 48 U. S. App. 55] 22: 622

To charge, when given.

[57 Fed. 467; 16 U. S. App. 30] 6: 428

To charge, not after jury retired.

[56 Fed. 447; 12 U. S. App. 421] 5: 548

To instructions, taken after retirement of jury.

[85 Fed. 690; 56 U. S. App. 601] 29: 392

Exception to charge not available if bill shows taking after charge given.

[63 Fed. 426; 24 U. S. App. 25] 12: 339

To instructions while jury are at bar.

[64 Fed. 667; 29 U. S. App. 32] 12: 451

To charge, must be seasonable, and while jury are at bar.

[53 Fed. 772; 2 U. S. App. 525] 3: 663

To charge in Federal court, not after jury retired.

[60 Fed. 583; 20 U. S. App. 425] 9: 138

**APPEAL AND ERROR—continued.**

Practice of state courts as to time of excepting to charge, not binding on Federal court.	[81 Fed. 331; 52 U. S. App. 258]	26: 436
To instructions, effect of exception taken after retirement of jury.	[79 Fed. 294; 49 U. S. App. 78]	24: 595
	[79 Fed. 423; 45 U. S. App. 578]	24: 654
To refusal to direct verdict.	[56 Fed. 76; 5 U. S. App. 423]	5: 421

**VI. OTHER MODES OF RAISING QUESTIONS BELOW.**

Judgment on agreed state of facts; mode of preserving objections.	[85 Fed. 387; 56 U. S. App. 330]	29: 214
Failure to refile demurrer after amendment of complaint.	[85 Fed. 856; 52 U. S. App. 510]	29: 457
Federal court following state practice as to submission of propositions of law on trial by court without a jury.	[85 Fed. 928; 57 U. S. App. 416]	29: 578
Failure to move to strike out testimony of expert shown to be incompetent.	[84 Fed. 430; 51 U. S. App. 693]	28: 443
Overruling motion for new trial as bringing up grounds for, not otherwise saved.	[67 Fed. 522; 32 U. S. App. 182; 23 L. R. A. 749]	14: 506

**VII. DISMISSAL.**

**In general.**

As to part of appellants not privy to suit.	[54 Fed. 894; 2 U. S. App. 445]	4: 652
Preference of motion for.	[82 Fed. 113; 52 U. S. App. 392]	27: 72
When order may state that dismissal was before hearing on merits.	[79 Fed. 385; 50 U. S. App. 1]	24: 647
Filing second motion without leave of court, when leave granted.	[51 Fed. 929; 5 U. S. App. 97]	2: 542
Direction in writ as to return.	[60 Fed. 979; 23 U. S. App. 143]	9: 300
Remitting case on motion to dismiss because no final judgment entered.	[70 Fed. 801; 28 U. S. App. 597]	17: 423

**Voluntary.**

Right of appellant to.	[79 Fed. 385; 50 U. S. App. 1]	24: 647
Right to dismiss without prejudice to take subsequent appeal.	[67 Fed. 809; 33 U. S. App. 123]	15: 26

**Grounds for—In general.**

Of second writ of error unnecessarily sued out.	[62 Fed. 118; 27 U. S. App. 74]	10: 302
For failure to file assignment of errors within required time.	[100 Fed. 10]	40: 247
That assignment of errors is based on patent not set up in answer.	[64 Fed. 149; 21 U. S. App. 459]	12: 77
Attempted appeal from denial of rehearing.	Id.	
Of writ of error because petition and order were for granting an appeal.	[90 Fed. 212; 61 U. S. App. 626]	32: 578
Filing prayer for reversal after assignment of errors.	[60 Fed. 979; 23 U. S. App. 143]	9: 300
For failure to appeal from interlocutory decree.	[64 Fed. 149; 21 U. S. App. 459]	12: 77
For bad faith towards nominal defendant, in whose name appeal taken.	Id.	

**—Lack of actual controversy.**

Grounds, settlement of differences, further prosecution collusive.	[80 Fed. 953; 53 U. S. App. 376]	26: 271
Payment of tax objected to, requires.	[74 Fed. 12; 36 U. S. App. 580]	20: 284
Where fund in controversy paid out.	[91 Fed. 566; 63 U. S. App. 452]	34: 10



**APPEAL AND ERROR—continued.**

- That damages had been agreed upon and paid. [64 Fed. 149; 21 U. S. App. 459] 12: 77
- When interest merged, third person interested in cost. [54 Fed. 268; 12 U. S. App. 157] 4: 319
- Of appeal from judgment for one joint defendant on judgment for other becoming final. [73 Fed. 88; 44 U. S. App. 487] 19: 379
- When appellee postmaster has been succeeded in office by another. [81 Fed. 242; 53 U. S. App. 289] 26: 382
- Appeal from interlocutory decree in patent case, expiration of patent. [75 Fed. 118; 36 U. S. App. 321; 40 U. S. App. 136] 21: 257
- Expiration of patent pending appeal from injunction restraining infringement. [61 Fed. 208; 21 U. S. App. 116] 9: 450
- In equity suit after its abandonment by commencing ejectment suit. [90 Fed. 690; 62 U. S. App. 435] 33: 236
- Of appeal in habeas corpus; prisoner beyond reach of court's process. [82 Fed. 769; 46 U. S. App. 667] 27: 342

**—Jurisdiction.**

- Want of jurisdiction of lower court. [56 Fed. 76; 5 U. S. App. 423] 5: 421
- For trial court's want of jurisdiction of parties. [94 Fed. 373] 36: 299
- Because jurisdiction of court below taken away before judgment rendered. [92 Fed. 689] 34: 619
- Where jurisdiction of case taken from court below after judgment rendered. [91 Fed. 295; 63 U. S. App. 359] 33: 515
- Questions affecting determination by and not jurisdiction of appellate court. [50 Fed. 849; 5 U. S. App. 90] 2: 58

**—Matters as to parties.**

- On ground that appellants not parties. [88 Fed. 122; 59 U. S. App. 602] 31: 419
- For failure to join necessary parties on appeal. [95 Fed. 41] 36: 645

**—Matters as to bonds.**

- Approval of bond by clerk instead of judge. [48 Fed. 849; 2 U. S. App. 151] 1: 115
- For irregularity in approval of bond by clerk instead of judge. [65 Fed. 463; 24 U. S. App. 525] 13: 8
- For delay in filing bond for costs. [73 Fed. 159; 41 U. S. App. 94] 19: 352

**—Delay or negligence, generally.**

- For failure to take in time. [50 Fed. 787; 2 U. S. App. 221] 1: 675
- For failure to docket in time. [77 Fed. 664; 46 U. S. App. 603] 23: 393
- For failure to sue out citation. [70 Fed. 728; 30 U. S. App. 513] 17: 358
- For failure to serve citation on appellee or his proctors. Id.
- For failure to serve citation and issue writ of error. [66 Fed. 798; 30 U. S. App. 87] 14: 96
- For failure to bring matter to hearing. [91 Fed. 566; 63 U. S. App. 452] 34: 10
- For serving citation less than thirty days before return day. [64 Fed. 149; 21 U. S. App. 459] 12: 77
- Of cross appeal, when postponement not asked for or diligence shown. [93 Fed. 765] 35: 590
- Failure to print record. [73 Fed. 314; 34 U. S. App. 626] 19: 477
- For failure to print record in time; time allowed. [49 Fed. 145; 7 U. S. App. 18] 1: 209

**—Insufficiency of papers.**

- For insufficiency of record, excuse. [61 Fed. 150; 23 U. S. App. 363] 9: 401

**APPEAL AND ERROR—continued.**

- For failure of record to show right to appeal.  
[49 Fed. 426; 4 U. S. App. 154] 1: 307
- Omissions from record by direction of appellant's attorney.  
[51 Fed. 929; 5 U. S. App. 97] 2: 542
- Bill of exceptions not embodying all the evidence; certiorari for diminution of record.  
[50 Fed. 849; 5 U. S. App. 90] 2: 58
- For failure of trial court clerk to indorse filing on writ of error.  
[79 Fed. 296; 49 U. S. App. 67] 24: 597
- Failure to file papers.**
- Failure to docket in circuit court. [52 Fed. 396; 8 U. S. App. 104] 3: 161
- Delay in filing cost bond. [73 Fed. 22; 39 U. S. App. 191] 19: 352
- For failure to file record in time. [49 Fed. 259; 4 U. S. App. 98] 1: 241
- For failure to file record before return day.  
[64 Fed. 149; 21 U. S. App. 459] 12: 77
- Because bill of exceptions not filed in time.  
[54 Fed. 468; 7 U. S. App. 626] 4: 441
- For absence of bill of exceptions, where only questions in case are of law.  
[90 Fed. 212; 61 U. S. App. 626] 32: 578
- For failure to file transcript until next day after return day of citation.  
[73 Fed. 314; 34 U. S. App. 626] 19: 477
- For failure to file assignment of errors.  
[54 Fed. 913; 2 U. S. App. 477] 4: 663
- For failure to file briefs. [73 Fed. 314; 34 U. S. App. 626] 19: 477
- For failure to appear or file brief in time; time allowed.  
[49 Fed. 145; 7 U. S. App. 18] 1: 209
- For failure to file and furnish record and brief within time prescribed.  
[72 Fed. 85; 25 U. S. App. 700] 18: 442

**VIII. STAY.**

- By appellate court after refusal by trial court.  
[81 Fed. 423; 46 U. S. App. 526] 26: 470
- Of mandate of affirmance, pending decision in supreme court.  
[99 Fed. 952] 40: 203

**IX. HEARING AND DETERMINATION.**

**Rules of decision, generally.**

- Error predicated on ruling, not on opinion or reason given therefor.  
[98 Fed. 811] 39: 308
- Affirming where one judge disqualified, other two divided in opinion.  
[57 Fed. 422; 13 U. S. App. 531] 6: 413
- Admissions in open court treated as equivalent to formal case agreed.  
[93 Fed. 629] 35: 501
- Cross bill filed by party improperly brought in, regarded as summary petition.  
[67 Fed. 837; 21 U. S. App. 658] 15: 33
- Reversal without considering other questions, where direction of verdict erroneous.  
[74 Fed. 285; 46 U. S. App. 85] 20: 184
- Reversing without discussion, where answer to certified question disposes of case.  
[73 Fed. 920; 34 U. S. App. 710] 20: 118
- Interlocutory decree enjoining infringement of patent; entire case not disposed of unless examination of whole case required.  
[61 Fed. 208; 21 U. S. App. 1, 116] 9: 450

**Who may be heard.**

- Objection to decree for divided damages waived by failing to appeal.  
[61 Fed. 516; 26 U. S. App. 11] 9: 600
- Against defendants in one of two consolidated cases, not available to defendant in other case.  
[64 Fed. 667; 29 U. S. App. 32] 12: 451

## APPEAL AND ERROR—continued.

Libellant not appealing cannot complain of disallowance of items.  
[50 Fed. 239; 1 U. S. App. 143] 1: 508

**Evidence; trial de novo.**

See also ADMIRALTY.

Sickness of party authorizes taking evidence pending.  
[68 Fed. 719; 25 U. S. App. 406] 15: 627

In admiralty; new proofs, see Note, 3: 322

Sufficiency of additional proofs taken on.  
[64 Fed. 806; 26 U. S. App. 466] 12: 611

Trial of case *de novo*. [72 Fed. 200; 25 U. S. App. 636] 18: 504

**Amendment of pleadings.**

Permitting amendments to pleadings on appeal in admiralty.  
[74 Fed. 640; 33 U. S. App. 503] 29: 572

To show jurisdiction. [56 Fed. 951; 12 U. S. App. 503] 6: 172

To show citizenship. [88 Fed. 814; 58 U. S. App. 171] 32: 124

In matters of substance in instance causes.  
[60 Fed. 423; 21 U. S. App. 90] 9: 54

Liberality in allowing amendments of notices of special matter of defense or counterclaim accompanying plea of general issue. [98 Fed. 946] 40: 35

**Failure to show error.**

Affirmance when assignment of error without foundation.  
[49 Fed. 305; 4 U. S. App. 207] 1: 244

Decree reversed unless record contains some evidence to sustain finding.  
[94 Fed. 274] 36: 239

Judgment not reversed unless clearly wrong.  
[73 Fed. 844; 39 U. S. App. 219] 20: 61

**Presumptions.**

Presumption as to facts not appearing in record.  
[56 Fed. 258; 12 U. S. App. 345] 5: 501

No presumption as to facts *dehors* the record.  
[49 Fed. 426; 4 U. S. App. 154] 1: 307

As to provision of charter and by-laws of corporation.  
[51 Fed. 381; 4 U. S. App. 438] 2: 286

As to independent proceedings for condemnation of lands.  
[51 Fed. 501; 3 U. S. App. 199] 2: 490

As to navigation rule of supervising inspectors, not set out in record.  
[55 Fed. 1021; 14 U. S. App. 346] 5: 390

Presumption that trial judge did not abuse discretion.  
[49 Fed. 206; 4 U. S. App. 202] 1: 229

Of leave to dismiss as to party. [56 Fed. 549; 15 U. S. App. 55] 6: 10

That letter admitted considered for purpose for which admissible.  
[95 Fed. 231] 37: 52

As to making proof of competent fact. [58 Fed. 158; 12 U. S. App. 635] 7: 136

Of evidence to support verdict. [69 Fed. 581; 32 U. S. App. 548] 16: 339

That facts necessary to support judgment proved. [93 Fed. 377] 35: 350

Findings presumptively correct. [97 Fed. 696] 38: 365

Correctness of finding on conflicting evidence.  
[68 Fed. 69; 32 U. S. App. 342] 15: 228

[72 Fed. 402; 36 U. S. App. 462] 18: 618

[74 Fed. 94; 36 U. S. App. 749] 20: 312

As to findings in equity on conflicting evidence.  
[58 Fed. 101; 12 U. S. App. 591] 7: 105

[61 Fed. 874; 27 U. S. App. 49] 10: 135

Correctness of master's or commissioner's findings of fact.  
[65 Fed. 794; 25 U. S. App. 134] 13: 137

Amendment necessary to avoid variance, regarded as made. [98 Fed. 946] 40: 35

APPEAL AND ERROR—continued.

- That demurrer waived by conduct of parties.  
[86 Fed. 422; 58 U. S. App. 349] 30: 157
- As to correctness of charge as a whole.  
[71 Fed. 286; 33 U. S. App. 376] 18: 117
- That trial court did not exceed discretion in expressing opinion as to weight of testimony.  
[49 Fed. 206; 4 U. S. App. 202] 1: 229
- That argument of counsel not considered prejudicial where not again mentioned after court's promise to endeavor to cure by charge. [100 Fed. 415] 40: 465
- That evidence justified refusal to direct verdict where no statement that all evidence brought up. [99 Fed. 438] 39: 408
- In favor of jury's obedience of instructions.  
[56 Fed. 587; 15 U. S. App. 143] 6: 45
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[64 Fed. 331; 21 U. S. App. 481; 26 L. R. A. 784] 12: 145

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[98 Fed. 666] 39: 220

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[56 Fed. 378; 15 U. S. App. 134] 5: 524

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[57 Fed. 368; 14 U. S. App. 615] 6: 394

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[70 Fed. 24; 36 U. S. App. 23] 16: 604

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[58 Fed. 705; 19 U. S. App. 239] 7: 439

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[71 Fed. 102; 36 U. S. App. 248] 17: 627

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[61 Fed. 795; 19 U. S. App. 683] 10: 74

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[65 Fed. 1; 24 U. S. App. 523] 12: 490

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[70 Fed. 219; 36 U. S. App. 1] 17: 71

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[86 Fed. 439; 58 U. S. App. 388] 30: 174
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[98 Fed. 925] 40: 163

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[60 Fed. 139; 23 U. S. App. 224] 8: 522

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- Irrelevant, in action tried by court, other sufficient legal evidence.  
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[51 Fed. 414; 1 U. S. App. 257] 2: 319
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[73 Fed. 335; 34 U. S. App. 642] 19: 508
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[72 Fed. 458; 38 U. S. App. 334, 340] 18: 632
- Allowing expert to testify as to opinion based on facts included in hypothetical question.  
[93 Fed. 621] 35: 493
- Expert testimony as to meaning of entries in national bank report.  
[97 Fed. 35] 38: 37
- Permitting answers to hypothetical questions assuming unproved facts.  
[64 Fed. 689; 24 U. S. App. 364] 12: 392
- Error in, as to one of several issues; effect.  
[63 Fed. 107; 27 U. S. App. 227, 25 L. R. A. 833] 11: 56
- Acquiescence in reception of evidence on false issue.  
[75 Fed. 953; 33 U. S. App. 567] 21: 575
- As to evidence excluded.
- No reversal for rejection of evidence. [54 Fed. 188; 7 U. S. App. 660] 4: 273
- Offered to prove admitted facts. [58 Fed. 144; 19 U. S. App. 24] 7: 122
- Cumulative evidence proved by other evidence without dispute.  
[94 Fed. 743] 38: 1
- Where substantially same thing stated in previous testimony.  
[100 Fed. 239] 40: 352
- Refusal to permit witness to refresh memory.  
[61 Fed. 809; 27 U. S. App. 88] 10: 87

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- Refusal of inspection of entire letter, statement from which brought out on cross-examination. [96 Fed. 729] 37: 574
- Of conversation in which witness denied having made certain statement, in absence of offer to show what answer would be, or to recall witness after testimony controverted. [100 Fed. 239] 40: 352
- As to author of libel. [55 Fed. 240; 14 U. S. App. 173] 5: 91
- To prove insanity of witness; admission that witness is inmate of insane asylum. [82 Fed. 720; 54 U. S. App. 222] 27: 333
- Of diminished value of property since giving of forthcoming bond in attachment suit. [98 Fed. 793] 39: 294
- Error in, as to one of several issues; effect. [63 Fed. 107; 27 U. S. App. 227; 25 L. R. A. 833] 11: 56
- Of fraud in procuring bond sued on. [63 Fed. 48; 22 U. S. App. 439] 11: 96

## —As to instructions given.

See also TRIAL.

- When no other verdict possible. [58 Fed. 670; 19 U. S. App. 229] 7: 426
- When evidence insufficient to support judgment for appellant. [57 Fed. 10; 13 U. S. App. 222, 314] 6: 231
- When impossible that jury could have been misled. [76 Fed. 517; 46 U. S. App. 300] 22: 306
- Judgment not disturbed for unprejudicial errors. [93 Fed. 737] 35: 562
- Erroneous instruction presumed prejudicial when erroneous under one theory. [93 Fed. 166] 35: 252
- Reversal unless record clearly shows that error was harmless. [59 Fed. 860; 19 U. S. App. 346] 8: 322
- Erroneous charge not affirmatively shown to be harmless. [63 Fed. 396; 27 U. S. App. 358] 11: 552
- Based on appellant's own theory. [75 Fed. 347; 36 U. S. App. 629] 21: 387
- Instruction favorable to appellant. [59 Fed. 40; 16 U. S. App. 569] 7: 652
- Erroneous reasons for proper instructions. [51 Fed. 63; 3 U. S. App. 125] 2: 97
- Abstract proposition. [48 Fed. 152; 4 U. S. App. 32] 1: 56  
[50 Fed. 898; 4 U. S. App. 399] 2: 76
- Correctly stating principles of law not applicable to case made by evidence. [99 Fed. 893] 40: 154
- Giving of abstract instruction which could not have misled jury. [63 Fed. 527; 27 U. S. App. 316] 11: 332
- Giving instruction not applicable to case. [62 Fed. 552; 23 U. S. App. 443] 11: 202
- Statement that two issues for trial, where two issues made by pleadings, but not by evidence. [73 Fed. 444; 44 U. S. App. 492] 19: 519
- Erroneous charge on one of several issues. [63 Fed. 84; 27 U. S. App. 277] 11: 33
- Instruction; negligence in failing to have error corrected. [82 Fed. 550; 53 U. S. App. 492] 27: 227
- Instruction, mere corollary of previous instruction. [83 Fed. 60; 49 U. S. App. 635] 27: 435
- Expression by judge of personal opinion that certain acts negligence. [62 Fed. 363; 27 U. S. App. 157] 11: 88
- Failure to cover hypothesis not supported by evidence. [58 Fed. 945; 16 U. S. App. 290, 22 L. R. A. 620] 7: 581
- Statement as to admissions of witnesses. [59 Fed. 70; 19 U. S. App. 307] 8: 1
- Instruction that burden of entire case was on plaintiff in action for personal injuries. [82 Fed. 869; 50 U. S. App. 249] 27: 264

**APPEAL AND ERROR—continued.**

- As to woman and child having interest in case as exciting jury's sympathy.  
[71 Fed. 258; 36 U. S. App. 401] 18: 107
- In action for personal injuries. [49 Fed. 209; 4 U. S. App. 109] 1: 231
- Instruction as to negligence of plaintiff in suit for personal injuries.  
[92 Fed. 567] 34: 545
- Whether one fellow servant or vice principal.  
[56 Fed. 810; 12 U. S. App. 490] 6: 148
- That railroad company bound to exercise utmost care to avoid killing stock.  
[49 Fed. 440; 4 U. S. App. 283] 1: 311
- In action by chattel mortgagee against attaching creditor of mortgagor.  
[51 Fed. 551; 10 U. S. App. 200] 2: 367
- As to validity of assignment for creditors.  
[48 Fed. 152; 4 U. S. App. 32] 1: 56
- As to relative rights of trustee for creditors and attaching creditors.  
[75 Fed. 350; 41 U. S. App. 491] 21: 390
- As to defendant's business being a cheat.  
[63 Fed. 426; 24 U. S. App. 25] 12: 339
- Relieving party from showing actual damages, and calling attention to his failure to do so.  
[61 Fed. 74; 26 U. S. App. 15] 9: 362
- Positive direction for ascertaining damages for death by mathematical calculations.  
[52 Fed. 371; 10 U. S. App. 339] 3: 129
- Reading charge as entirety to determine whether misleading.  
[94 Fed. 127] 36: 105
- As to instructions refused or omitted.**
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[79 Fed. 903; 51 U. S. App. 157] 25: 223
- Refusal of requested, as to negligence; negligence conclusively shown.  
[51 Fed. 649; 10 U. S. App. 200] 2: 437
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- As to verdict.**
- As to form of verdict. [58 Fed. 609; 19 U. S. App. 215] 7: 386
- Proper verdict not disturbed for error. [93 Fed. 737] 35: 562
- Failure to specify under which count defendant found guilty, where minimum sentence under either, imposed. [92 Fed. 355] 34: 403
- As to submission or withdrawal; nonsuit.**
- Failure to submit counterclaim; repetition.  
[77 Fed. 138; 40 U. S. App. 382] 23: 89
- Permitting jury to consider ground of negligence waived by plaintiff, remaining ground sufficient to support verdict.  
[85 Fed. 754; 57 U. S. App. 129] 29: 631
- Refusal to withdraw matter of exemplary damages.  
[69 Fed. 218; 30 U. S. App. 347] 16: 212
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[86 Fed. 433; 58 U. S. App. 575] 30: 168
- Plaintiff's right to complain of nonsuit where direction of verdict for defendant proper. [74 Fed. 507] 20: 630
- Refusal to direct verdict, waiver of. [53 Fed. 257; 7 U. S. App. 424] 3: 525
- As to judgment.**
- Judgment less favorable than verdict. [50 Fed. 888; 4 U. S. App. 290] 2: 67
- Failure to award nominal damages. [95 Fed. 250] 37: 62
- Reversing judgment against plaintiff entitled to nominal damages only.  
[97 Fed. 176] 38: 103
- Technical error in failing to award nominal damages as to one item.  
[73 Fed. 800; 36 U. S. App. 645] 20: 11

**APPEAL AND ERROR—continued.**

- Reversal of allowance of attorney's fee in stockholder's action.  
[57 Fed. 66; 13 U. S. App. 377] 6: 249
- Amount of salvage awarded not disturbed because value of vessel estimated too high.  
[86 Fed. 340; 57 U. S. App. 688] 30: 70
- Statement of wrong legal conclusion on one issue harmless, where judgment supported by unassailable finding on other issue. [100 Fed. 590] 40: 571
- Decree for salvage services not disturbed as excessive unless unreasonably great.  
[98 Fed. 314] 39: 96
- Award for salvage services based on correct principle, not disturbed unless clearly exorbitant.  
[98 Fed. 735] 39: 248
- Decreeing entire mortgage debt due. [63 Fed. 891; 24 U. S. App. 38] 12: 350
- Proper judgment based on wrong reason.  
[83 Fed. 684; 55 U. S. App. 125] 28: 9

**X. JUDGMENT.****In general.**

- As to interest on award. [54 Fed. 404; 7 U. S. App. 652] 4: 393
- Form of order affirming order below.  
[72 Fed. 920; 33 U. S. App. 421] 19: 237
- Reversal, not dismissal, proper remedy when lower court had no jurisdiction.  
[51 Fed. 929; 5 U. S. App. 97] 2: 542
- When judgment below already modified pursuant to decision of same questions on another appeal. [80 Fed. 740; 52 U. S. App. 178] 26: 130
- Decree in favor of intervenor affirmed, though bill by intervenor for relief more proper remedy. [93 Fed. 878] 35: 639
- Appeal from preliminary injunction, when case determined on merit.  
[77 Fed. 501; 47 U. S. App. 74, 240] 23: 252
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[54 Fed. 802; 2 U. S. App. 627] 4: 584

**Rendering modified judgment—In general.**

- Affirming in part. [72 Fed. 79; 44 U. S. App. 96] 18: 373
- Rendering decree which should have been rendered below.  
[50 Fed. 860; 5 U. S. App. 49] 2: 60  
[52 Fed. 10; 5 U. S. App. 151; 17 L. R. A. 615] 2: 596  
[52 Fed. 337; 6 U. S. App. 275] 3: 103
- By providing that dismissal be without prejudice.  
[60 Fed. 137; 23 U. S. App. 253] 8: 519
- So as to make absolute dismissal without prejudice, although error not urged.  
[94 Fed. 728] 36: 443
- Ordering dismissal of preliminary injunction if without equity.  
[89 Fed. 333; 60 U. S. App. 325] 32: 231
- Decree in patent case broader than findings, corrected on court's own motion.  
[64 Fed. 368; 21 U. S. App. 526] 12: 356  
[64 Fed. 491; 21 U. S. App. 574] 12: 603
- Rendering decision for opposite party on point not raised below.  
[96 Fed. 914] 37: 623
- On appeal from interlocutory decree enjoining infringement of patent.  
[52 Fed. 10; 5 U. S. App. 151; 17 L. R. A. 615] 2: 596
- In action to enjoin infringement of patent.  
[52 Fed. 337; 6 U. S. App. 275] 3: 103
- Modifying decree in admiralty to protect seamen not appealing.  
[74 Fed. 899; 33 U. S. App. 510] 21: 162
- So as to set off liability for costs against debt due from other party.  
[70 Fed. 647; 22 U. S. App. 725] 17: 367
- Modification of order dissolving injunction against enforcing execution so as to permit correction and restrain payment to execution plaintiff.  
[97 Fed. 136] 38: 75

**APPEAL AND ERROR—continued.**

- As to interest on damages in collision case.  
[62 Fed. 71; 22 U. S. App. 242] 10: 262
- Affirming by holding single issue tendered not conclusive as to other matters  
pleaded and considered by court below.  
[89 Fed. 648; 60 U. S. App. 675] 32: 284
- When leave to file plea in abatement for nonjoinder improperly denied below.  
[56 Fed. 76; 5 U. S. App. 423] 5: 421
- Motion to modify filed long after term at which order entered.  
[84 Fed. 921; 56 U. S. App. 52] 28: 566

**—As to damages generally.**

- Changing amount of salvage award on.  
[71 Fed. 527; 38 U. S. App. 32] 18: 240
- Reducing award of salvage.  
[48 Fed. 737; 1 U. S. App. 47] 1: 81
- Reducing amount of salvage award on appeal for overvaluation of vessel.  
[66 Fed. 500; 30 U. S. App. 153] 13: 647
- Award of salvage not reduced because large in proportion to value of property.  
[51 Fed. 958; 2 U. S. App. 317] 2: 581
- Interest pending appeal in collision case.  
[59 Fed. 476; 11 U. S. App. 749] 8: 182
- Interest on affirmance of decree in collision case.  
[59 Fed. 475; 11 U. S. App. 691] 8: 181
- Following practice of state courts as to.  
[75 Fed. 97; 44 U. S. App. 636] 21: 242
- Necessity of provision for interest in decree appealed from. Id.
- Power to modify as to costs after term.  
[85 Fed. 251; 56 U. S. App. 155] 29: 140
- Award of attorney's fee not disturbed as excessive unless clearly unjust.  
[54 Fed. 614; 13 U. S. App. 229] 4: 521

**—Remittitur.**

- Remitting trifling excess in computing interest.  
[54 Fed. 474; 10 U. S. App. 629] 4: 447
- Over amount justified by findings of jury.  
[57 Fed. 368; 14 U. S. App. 615] 6: 394
- Amount of excess apparent; erroneous instruction as to measure of damages.  
[58 Fed. 152; 12 U. S. App. 665] 7: 130  
[58 Fed. 158; 12 U. S. App. 675] 7: 136

**Remanding—In general.**

- When appellate court will itself determine amount instead of remanding.  
[76 Fed. 227; 45 U. S. App. 105] 22: 138
- When judgment will be directed instead of awarding a new trial.  
[83 Fed. 125; 49 U. S. App. 577] 27: 477
- Necessary recitals in mandate.  
[72 Fed. 290; 33 U. S. App. 430] 18: 566
- Reserving leave to file bill of review.  
[53 Fed. 31; 5 U. S. App. 215] 3: 411  
[53 Fed. 758; 5 U. S. App. 240] 3: 644
- Granting leave to file in court below a bill of review after mandate goes down.  
[73 Fed. 908; 33 U. S. App. 452] 20: 111
- Recitals in mandate, on affirming interlocutory order granting injunction.  
[72 Fed. 67; 37 U. S. App. 555, 689] 19: 13
- Judgment reversed as against surety only, directions to lower court.  
[61 Fed. 77; 17 U. S. App. 442, 463] 9: 366
- Reversing with direction to remand to state court.  
[48 Fed. 769; 2 U. S. App. 148] 1: 91  
[53 Fed. 163; 10 U. S. App. 485] 3: 480
- When cause remanded for further proceedings from point where error committed.  
[78 Fed. 576; 47 U. S. App. 402] 24: 321
- Remanding for dismissal in case of collusion affecting jurisdiction.  
[60 Fed. 55; 16 U. S. App. 656, 709] 8: 455



**APPEAL AND ERROR—continued.**

- Directing court below to enter proper judgment.  
[66 Fed. 899; 29 U. S. App. 227] 14: 166
- Direction on reversal as to ascertainment of rental value of land.  
[68 Fed. 69; 32 U. S. App. 342] 15: 228
- Remanding for rehearing on new evidence.  
[67 Fed. 809; 33 U. S. App. 123] 15: 26
- Amendments of orders in court below not justified by mandate.  
[71 Fed. 764; 30 U. S. App. 646] 18: 309
- Proper remedy for disobedience of mandate.  
[85 Fed. 853; 53 U. S. App. 635] 29: 456
- Recall of mandate of circuit court of appeals unnecessary on appeal to Supreme Court.  
[72 Fed. 567; 39 U. S. App. 180] 19: 41

**—Provisions as to amendments.**

- Reserving leave to amend bill on affirming.  
[68 Fed. 542; 33 U. S. App. 236] 15: 569
- Granting leave to apply in trial court for amendment of declaration.  
[93 Fed. 260] 35: 282
- Reserving leave to move in court below for amendment of bill.  
[89 Fed. 1; 50 U. S. App. 407] 32: 151
- Reversing, with directions to set aside pleadings subsequent to bill and permit amendment of bill.  
[71 Fed. 567; 30 U. S. App. 642] 18: 249
- With instructions to reframe pleadings to conform to procedure at law.  
[69 Fed. 113; 37 U. S. App. 213] 16: 172
- Remanding on reversal, with leave to amend to show jurisdiction.  
[64 Fed. 148; 24 U. S. App. 351] 12: 75
- Remanding to admit of amendment to supply jurisdictional defect.  
[74 Fed. 657, 1008; 41 U. S. App. 152] 21: 356
- Directing allowance of amendment to explain delay in bringing suit.  
[87 Fed. 51; 57 U. S. App. 730] 30: 520
- Granting leave to amend bill, setting up other patents on affirming.  
[71 Fed. 519; 33 U. S. App. 373] 18: 234

**Effect of decision—In general.**

For Statutory New Trial in Ejectment after Judgment on Appeal, see **NEW TRIAL**.

- Right to appeal as to new question arising after mandate.  
[81 Fed. 876; 48 U. S. App. 430] 26: 665
- On subsequent proceedings.  
[58 Fed. 251; 14 U. S. App. 684] 7: 216
- On finality of decree below.  
[76 Fed. 767; 46 U. S. App. 411] 22: 549
- Reversal or modification of judgment in accounting as affecting bar.  
[62 Fed. 638; 23 U. S. App. 420] 10: 555
- As to surety's liability for interest on money in court.  
[53 Fed. 112; 5 U. S. App. 197] 3: 466
- Effect of affirmance of money judgment without passing on interest.  
[49 Fed. 907; 6 U. S. App. 22] 1: 478
- Reversal of temporary injunction conclusive only as to showing made.  
[61 Fed. 782; 18 U. S. App. 458, 24 U. S. App. 81] 10: 60
- Of reversal, on title acquired at judicial sale.  
[78 Fed. 563; 40 U. S. App. 748] 23: 551
- Of reversal of judgment on which property sold, on right of redemption.  
[76 Fed. 721; 40 U. S. App. 427] 23: 541
- Accounting for benefits under judgment after reversal.  
[52 Fed. 1; 2 U. S. App. 254] 2: 587
- Court will not consider possible effect of affirming interlocutory order granting injunction.  
[72 Fed. 67; 37 U. S. App. 555, 689] 19: 13
- Division of opinion, binding force of affirmance.  
[56 Fed. 762; 9 U. S. App. 578] 6: 111

APPEAL AND ERROR—continued.

—**Restitution.**

Of money paid under erroneous decree.

[71 Fed. 763; 33 U. S. App. 393] 18: 308

Right of purchaser at foreclosure sale, the order confirming which set aside.

[94 Fed. 788] 36: 494

Basis on which, required at law and in equity.

[72 Fed. 708; 30 U. S. App. 683] 19: 152

Requiring repayment to purchaser on foreclosure as condition of ordering. Id.

—**On proceedings in lower court.**

Decision on appeal settles everything disposed of.

[73 Fed. 908; 33 U. S. App. 452] 20: 111

Finally settles as law of the case everything before the court.

[72 Fed. 545; 43 U. S. App. 47] 19: 25

Reserving leave to court below to modify order.

[74 Fed. 429; 38 U. S. App. 651] 20: 494

Power of court below to modify decree affirming on the merits.

[72 Fed. 545; 43 U. S. App. 47] 19: 25

Motion to modify mandate not entertained after term expiring after time allowed for petition for rehearing.

[99 Fed. 322] 39: 538

Authority to permit amendments to enlarge issues and admit further proofs.

Id.

Court below may enlarge, modify, or suspend decree for preliminary injunction after affirmance.

[72 Fed. 545; 43 U. S. App. 47] 19: 25

Duty of court below where specific directions as to decree given.

[66 Fed. 179; 30 U. S. App. 119] 13: 386

Where mandate leaves single question of fact for determination.

[91 Fed. 955] 34: 138

Where mandate directs further proceedings, not inconsistent with opinion of appellate court.

[99 Fed. 322] 39: 538

Settling rights in navigable waters as they exist when decree rendered, after mandate on appeal.

[91 Fed. 955] 34: 138

Refusal to make order for new trial after remanding conditional on paying costs.

[89 Fed. 903; 61 U. S. App. 499] 32: 402

New trial required on remanding because facts stipulated evidential only.

[88 Fed. 627; 60 U. S. App. 225] 32: 64

Receiver's possession of property no ground for restraining enforcement of judgment made in pursuance of mandate.

[73 Fed. 562; 43 U. S. App. 214] 19: 563

Power to direct repayment to sureties of receiver of money paid into court by them though other direction in mandate, where appointment of receiver void.

[99 Fed. 489] 39: 609

Power of court below after affirmance of decree for preliminary injunction.

[72 Fed. 545; 43 U. S. App. 47] 19: 25

Affirmance of interlocutory decree granting injunction; power of lower court to suspend injunction.

[59 Fed. 501; 11 U. S. App. 600] 8: 200

Enjoining enforcement of decree in pursuance of mandate on appeal.

[73 Fed. 562; 43 U. S. App. 214] 19: 563

Introducing additional evidence consistent with stipulation on remanding.

[88 Fed. 627; 60 U. S. App. 225] 32: 64

Questions arising on application to file bill of review in court below.

[73 Fed. 908; 33 U. S. App. 452] 20: 111

Court below no power to entertain bill of review on newly discovered evidence unless permission given.

Id.

Reserving right to apply to court below for leave to file bill of review on affirming.

[63 Fed. 609; 21 U. S. App. 463] 11: 353

Effect as to interest.

[49 Fed. 907; 6 U. S. App. 22] 1: 478

## APPEAL AND ERROR—continued.

Allowance of interest by lower court upon affirmed decree.

[75 Fed. 97; 44 U. S. App. 636] 21: 242

Lower court adding interest to affirmed decree.

[49 Fed. 907; 6 U. S. App. 22] 1: 478

## —On second appeal.

Opinion on first appeal, law of the case.

[95 Fed. 244] 37: 56

Questions decided on first appeal not considered.

[87 Fed. 157; 57 U. S. App. 618] 30: 584

Question determined on first appeal not reconsidered, though additional findings made.

[100 Fed. 393] 40: 444

Question already settled on former appeal.

[84 Fed. 772; 52 U. S. App. 442] 28: 207

Bound only on points distinctly determined.

[73 Fed. 974; 36 U. S. App. 693] 20: 151

Decision that payment of taxes was "made in good faith" the law of the case.

[59 Fed. 872; 19 U. S. App. 469] 8: 334

Considering on second writ of error questions before court on first.

[79 Fed. 733; 48 U. S. App. 213] 25: 178

Decision on former appeal not binding where evidence different.

[73 Fed. 974; 36 U. S. App. 693] 20: 151

Judgment determining questions not covered by mandate on former appeal.

[68 Fed. 859; 34 U. S. App. 107] 16: 37

Where mandate leaves single question of fact for further determination.

[91 Fed. 955] 34: 138

Decision of supreme court as to jurisdiction below conclusive on subsequent appeal.

[51 Fed. 929; 5 U. S. App. 97] 2: 542

Declaring void, statute held valid on first appeal.

[96 Fed. 293] 37: 493

Decree entered in accordance with mandate on prior appeal, not appealable.

[97 Fed. 394] 38: 219

## XI. REHEARING.

Only judges joining in decision responsible for granting or refusing.

[96 Fed. 687] 38: 483

Granting of, vacates original judgment.

[95 Fed. 41] 36: 645

Papers filed on petition for.

[67 Fed. 837; 21 U. S. App. 658] 15: 33

Petition for, must be supported by certificate of counsel.

[57 Fed. 10; 13 U. S. App. 222, 314] 6: 231

Petition for, containing mere argument as to insufficiency of proof.

[63 Fed. 182; 8 U. S. App. 651] 11: 117

Petition for, made within time fixed by standing order of court.

[66 Fed. 1; 27 U. S. App. 730] 13: 275

Reargument not necessary though court divided.

[57 Fed. 422; 13 U. S. App. 531] 6: 413

For newly discovered evidence.

[63 Fed. 289; 22 U. S. App. 473, 546] 11: 196

For causes not brought to court's attention upon original argument.

[63 Fed. 472; 21 U. S. App. 402, 426] 11: 294

Great importance of case, not ground for.

[67 Fed. 17; 32 U. S. App. 123] 14: 228

For questions already fully argued and decided.

[82 Fed. 545; 54 U. S. App. 108] 27: 373

Questioning jurisdiction on motion for.

[50 Fed. 785; 2 U. S. App. 188] 1: 668

Considering sufficiency of assignment of error not questioned on original hearing.

[69 Fed. 1; 37 U. S. App. 211] 16: 106

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[66 Fed. 663; 24 U. S. App. 641] 14: 36

[67 Fed. 837; 21 U. S. App. 658] 15: 33

APPEAL AND ERROR—continued.

XII. ACTION AND LIABILITY ON BOND.

**In general.**

Stay bond, when condition broken.	[54 Fed. 269; 12 U. S. App. 11]	4: 320
Action, conditions of, stay.	[57 Fed. 909; 12 U. S. App. 629]	6: 632
Summary judgment, when entered, amount of, interest.	[56 Fed. 790; 13 U. S. App. 554]	6: 125
Summary judgment on bond given by county as representative of persons liable on drain bonds.	[75 Fed. 694; 43 U. S. App. 657]	21: 505
Right of surety on supersedeas bond of railroad to preference in proceeds of railroad mortgage.	[76 Fed. 74; 43 U. S. App. 643]	22: 67
Supersedeas bond; discharge of sureties; conditional acceptance of securities from appellant.	[85 Fed. 620; 52 U. S. App. 579]	29: 382

**Extent of surety's liability.**

For interest after notice, trustee process.	[53 Fed. 112; 5 U. S. App. 197]	3: 466
Interest on money retained in court pending appeal.		Id.
Amount of decree, not merely compensation for delay.		Id.

**APPEARANCE.**

On Appeal, see APPEAL AND ERROR.

Intervener limiting to protection of right.	[68 Fed. 818; 30 U. S. App. 329]	16: 1
By officers of foreign corporation enjoined in own state.	[70 Fed. 129; 36 U. S. App. 167]	17: 16
By attorney, to answer libel <i>in rem</i> , not authorize personal judgment.	[66 Fed. 340; 30 U. S. App. 214]	13: 504
Want of, by heirs of deceased defendant; form of judgment.	[60 Fed. 676; 13 U. S. App. 707]	9: 204
Effect of, by nonresident, not taken away by subsequent withdrawal.	[69 Fed. 451; 37 U. S. App. 365]	16: 296
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**What constitutes.**

By receivers; what constitutes.	[49 Fed. 807; 4 U. S. App. 247]	1: 441
When special appearance becomes general.	[84 Fed. 69; 52 U. S. App. 417]	28: 382
	[84 Fed. 939; 56 U. S. App. 231]	28: 576
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By filing petition for removal from state to Federal court.	[65 Fed. 941; 31 U. S. App. 192]	13: 222
Filing petition for removal to Federal court, without limiting effect of appearance.	[71 Fed. 897; 37 U. S. App. 639]	18: 382

**Waiver by—In general.**

Wrong venue waived by.	[70 Fed. 874; 44 U. S. App. 26, 31 L. R. A. 715]	18: 366
Effect as waiver of privilege as to venue.	[56 Fed. 104; 12 U. S. App. 351]	5: 432
Effect of appearance as waiver, see		Note, 5: 599

**—Objections to jurisdiction.**

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[49 Fed. 401; 4 U. S. App. 209] 1: 299
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- Property in trademark passes under cession and acceptance of property.  
[93 Fed. 624; 46 L. R. A. 541] 35: 496
- Acceptance of debtor's cession of all property vests entire property in creditors, although not enumerated in schedule. Id.
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- Rights of attaching creditors. [54 Fed. 93; 10 U. S. App. 704] 4: 205  
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- Application by accepting assignee as "person interested" for appointment of successor. [73 Fed. 762; 40 U. S. App. 54] 19: 675
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[76 Fed. 710; 42 U. S. App. 186] 22: 504

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[99 Fed. 920] 40: 182

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Right of assignee for creditors to contest petition for bankruptcy based on assignment as act of bankruptcy. [98 Fed. 976] 39: 368

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[100 Fed. 426] 40: 474

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[95 Fed. 637] 37: 210

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[95 Fed. 637] 37: 210

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[95 Fed. 948] 37: 337

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[95 Fed. 637] 37: 210

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[98 Fed. 976] 39: 368

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[93 Fed. 640] 35: 522

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Trustee's right to recover attached property from sheriff, although replevin action by stranger pending. Id.

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- Allowing petition for, in lieu of appeal. Id.
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- Facts, as well as law, reviewable. [96 Fed. 935] 37: 634
- Alleged error in entertaining jurisdiction of bill in equity by trustee in bankruptcy against stranger, to set aside fraudulent conveyance not reviewable on appeal. [99 Fed. 539] 39: 647
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- What petition for review should state. [96 Fed. 935] 37: 634

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- Wages of laborers earned more than three months before proceedings commenced. [91 Fed. 96; 63 U. S. App. 570] 33: 356
- Perfected liens for labor preferred to unperfected ones. [95 Fed. 116] 36: 677
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- Necessity of creditor innocently receiving partial payment surrendering same before allowance of claims. Id.

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- Voluntary bankrupt not required to solicit gifts or loans to pay filing fees. [94 Fed. 801] 36: 502
- Requiring voluntary bankrupt to pay filing fees out of property set apart as exempt or money subsequently earned. Id.
- Watch exempt as "wearing apparel." Id.
- Severance of exempted articles to be made by trustee, not by debtor. [100 Fed. 284] 40: 378
- Duty of voluntary bankrupt to claim exemptions at time of filing petition. Id.
- Setting apart full amount out of firm property to each partner with other's consent. Id.

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- Including watch as "wearing apparel" in schedule. [94 Fed. 801] 36: 502
- Failure to include claim against wife for money loaned her. Id.
- Failure to list in assets money borrowed to pay attorney's fees and costs. Id.
- Failure to keep books of account. Id.

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- As defense to an action on subscription to corporate stock. [79 Fed. 926; 51 U. S. App. 184] 25: 239
- Defense of, concluded by judgment. [84 Fed. 735; 52 U. S. App. 272] 28: 520
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Indebtedness not void because debt exceeds authorized limit.

[64 Fed. 208; 29 U. S. App. 97] 12: 93

National bank may incur indebtedness to the amount of paid-up capital. *Id.*

To purchase stock of other corporation as investment.

[98 Fed. 271] 39: 76

When national may not purchase its own stock.

[84 Fed. 111; 53 U. S. App. 712] 28: 130

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[86 Fed. 505; 58 U. S. App. 648] 30: 223

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[77 Fed. 129; 40 U. S. App. 690] 23: 80

Of national bank to guarantee payment of debts.

[82 Fed. 799; 49 U. S. App. 596] 27: 171

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Estoppel to assert that conveyance to was *ultra vires*.

[73 Fed. 945; 36 U. S. App. 702] 20: 122

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Capital, a pledge for creditor's security.

[72 Fed. 402; 36 U. S. App. 462] 18: 618

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[89 Fed. 843; 60 U. S. App. 720] 33: 1

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[93 Fed. 326] 35: 323

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[99 Fed. 801] 40: 93

Valid subscription to increased stock not affected by subsequent action limiting amount of increase. [93 Fed. 326] 35: 323

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Of national bank; increase of; estoppel of subscriber to question validity of. [85 Fed. 934; 56 U. S. App. 636] 29: 491

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Comptroller's certificate authorizing increase conclusive as to existence of all necessary facts. [99 Fed. 801] 40: 93



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Of cashier of national bank.

[76 Fed. 118; 40 U. S. App. 221; 34 L. R. A. 477] 22: 93

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Id.

Reappointment in accordance with by-law at beginning of each year.

Id.

Directors' meetings; necessity of formal notice; custom of bank.

[82 Fed. 961; 48 U. S. App. 633] 27: 274

Presence of director necessary to constitute quorum at meeting at which contract executed with other bank of which he is stockholder.

[97 Fed. 282] 38: 179

**—Authority of, and liability of bank for acts of.**

Estoppel to deny officer's authority. [66 Fed. 34; 32 U. S. App. 29] 13: 313

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[63 Fed. 26; 22 U. S. App. 493] 11: 16

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[82 Fed. 277; 48 U. S. App. 388] 27: 120

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[59 Fed. 372; 16 U. S. App. 465] 8: 155

Borrowing money; ratification by failing to object to statement from loaning bank showing loan; negligence of bookkeepers.

[83 Fed. 556; 54 U. S. App. 462] 27: 601

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[61 Fed. 551; 26 U. S. App. 67] 9: 606

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[94 Fed. 30; 45 L. R. A. 822] 36: 56

Fraudulent alteration of draft by bank employee.

[58 Fed. 140; 19 U. S. App. 152; 22 L. R. A. 686] 7: 111

Bank, not third person, liable for loss from director's authorizing president to use drafts on funds for personal use.

[94 Fed. 30; 45 L. R. A. 822] 36: 56

Payees of drafts drawn by president on bank funds for margins, put on inquiry as to his authority.

Id.

Estoppel to deny president's authority to draw drafts for personal use.

Id.

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Id.

Right of purchaser of bank stock to rely upon president's statement.

[60 Fed. 17; 13 U. S. App. 649] 8: 444

False statement by president as to bank's financial condition, made to procure discount.

[64 Fed. 710; 26 U. S. App. 448] 12: 413

Right to assume from course of dealing that president authorized to rediscount paper.

[79 Fed. 296; 40 U. S. App. 67] 24: 597

Estoppel by acquiescence to deny president's authority to indorse paper for rediscount.

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Id.

Deed for advances by president of insolvent bank with apparent, but not actual, authority to execute.

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[94 Fed. 30; 45 L. R. A. 822] 36: 56

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[82 Fed. 277; 48 U. S. App. 388] 27: 120

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[65 Fed. 573; 31 U. S. App. 75] 13: 47

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[82 Fed. 961; 48 U. S. App. 633] 27: 274

Cashier's authority to pledge bank's credit to secure discount of own notes.

[66 Fed. 691; 32 U. S. App. 52] 14: 61

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[83 Fed. 725; 54 U. S. App. 510] 28: 42

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Cashier not bank's agent in promulgating false statements as to financial condition of company of which he is director, indebted to bank.

[92 Fed. 274; 63 U. S. App. 173] 34: 338

Liability for nonpresentment of indorsed note deposited as collateral security for cashier's note.

[63 Fed. 26; 22 U. S. App. 493] 11: 16

Money borrowed by cashier upon forged signatures of officers and forged resolutions.

[80 Fed. 859; 52 U. S. App. 209] 26: 195

Of vice president or cashier of national bank to borrow money.

[83 Fed. 556; 54 U. S. App. 462] 27: 601

Effect of custom between corresponding banks.

Id.

Implied from knowledge and conduct on part of directors.

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Of cashier of national; presumption; transaction outside legitimate sphere.

[77 Fed. 129; 40 U. S. App. 690] 23: 80

To guarantee mortgage sold by bank as brokers.

Id.

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[77 Fed. 949; 39 U. S. App. 483] 23: 586

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[58 Fed. 140; 19 U. S. App. 152; 22 L. R. A. 686] 7: 111

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[95 Fed. 87] 36: 659

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[84 Fed. 119; 55 U. S. App. 570] 28: 297

Knowledge of president as constructive notice to bank.

[57 Fed. 20; 13 U. S. App. 300] 6: 237

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[75 Fed. 433; 43 U. S. App. 550] 22: 378

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[72 Fed. 129; 37 U. S. App. 642] 18: 475

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[94 Fed. 30; 45 L. R. A. 822] 36: 56

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[94 Fed. 582] 36: 402

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[78 Fed. 558; 47 U. S. App. 416] 24: 236

Sufficiency of averments to show causal relation between misrepresentations to depositor and loss.

Id.

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[83 Fed. 738; 54 U. S. App. 532] 28: 66

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Id.

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- Duty when reason to distrust integrity or efficiency of cashier or other employees. [91 Fed. 587; 61 U. S. App. 372; 44 L. R. A. 761] 33: 222
- Liable only for losses resulting from negligence. Id.
- For negligent manner in which committees perform duties. Id.
- Not liable for losses occurring through cashier's malversations. Id.
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- Of directors authorizing prosecution of mining business on property acquired. [94 Fed. 582] 36: 402
- By assenting to use of funds in manufacturing enterprise by other corporation. [86 Fed. 505; 58 U. S. App. 648] 30: 223
- For losses from increase of stock based on fictitious value of assets. Id.
- Liability of directors for improperly declaring dividends. Id.
- For improper declaration of stock dividend. Id.
- Damages recoverable from, for improper disposition of stock. Id.
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- Claim that bank president permitted to draw drafts for personal benefit through director's negligence, unavailing where no finding of negligence. [94 Fed. 30; 45 L. R. A. 822] 36: 56
- Officers jointly and severally liable for loss by unauthorized appropriation or culpable negligence. [94 Fed. 582] 36: 402
- Receivers, not creditors, must enforce personal liability of officers and directors. [63 Fed. 488; 27 U. S. App. 339] 11: 304
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- When action against, for improper declaration and distribution of dividend barred. [86 Fed. 505; 58 U. S. App. 648] 30: 223
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- Liability for false statements to third person as to financial condition of customer. [98 Fed. 562] 39: 1
- For making false statement to insurance commissioner as to amount of capital and surplus of insurance company on deposit. Id.
- For causing such statement to be published, to induce third persons to purchase stock. Id.
- Bank's liability for misappropriation of park funds used by treasurer in paying to bank debt due from firm of which treasurer member. [99 Fed. 900] 40: 155
- No implied promise by bank whose debts assumed to repay bank assuming, amount in excess of value of property transferred. [97 Fed. 282] 38: 179
- Agreement to pay liabilities of other bank in consideration of property transferred. Id.
- Duty to return or account for value of securities received under *ultra vires* contract. [97 Fed. 739] 38: 399
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- Who liable as shareholder in national bank, see Note, 15: 130  
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 Notwithstanding irregularities or fraudulent practices in organization or management of bank. [99 Fed. 801] 40: 93  
 Right to set off claim for fraudulent representation inducing purchase against assessment. [97 Fed. 865] 38: 510  
 Subscribers for increase of stock not released from liability by reduction of amount of increase after bank insolvent. [99 Fed. 801] 40: 93  
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 Fraud against purchaser of bank stock not litigated in suit by receiver for bank creditors to set aside. [72 Fed. 402; 36 U. S. App. 462] 18: 618  
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- Real owner of stock in name of agent liable to assessment. [91 Fed. 453; 63 U. S. App. 31] 33: 574
- When assessment against bank regarded as against stockholders on their shares. [91 Fed. 93; 62 U. S. App. 638] 33: 353
- For assessments by comptroller; bank no power to release. [89 Fed. 843; 60 U. S. App. 720] 33: 1
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- Generally. [58 Fed. 666; 15 U. S. App. 259] 7: 422  
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- Of national bank stock. [79 Fed. 891; 51 U. S. App. 148] 25: 214  
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- Pledgee purchasing without having stock transferred. [94 Fed. 964] 36: 584
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- Executor receiving stock as assets. [71 Fed. 256; 33 U. S. App. 368] 18: 36
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- See also Note, 15: 136
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- Induced by uncertainty as to bank's ability to stand a run. [79 Fed. 170; 45 U. S. App. 623] 24: 470
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- Made to avoid liability. Id.
- Not entered on bank books. [73 Fed. 136; 41 U. S. App. 95] 19: 406
- Sale by auctioneer to bank cashier as such. [97 Fed. 410] 38: 226
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**Banking—In general.**

- Right to equitable lien on proceeds of sale of stock purchased with money borrowed from bank. [84 Fed. 270; 55 U. S. App. 515] 28: 329
- Estoppel of bank to enforce note by assuming ownership over collateral from cashier to maker. [63 Fed. 26; 22 U. S. App. 493] 11: 16
- Clearing house, security, receiver's rights. [62 Fed. 645; 17 U. S. App. 647; 25 L. R. A. 842] 10: 562
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**—Distinguishing between loan to bank and to directors.**

- When loan deemed made to bank rather than to directors. [82 Fed. 961; 48 U. S. App. 633] 27: 274
- Arrangement as to how transaction entered on bank's books not controlling. Id.
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- Certificate of deposit, accepting as collateral after dishonor, bona fide holder.  
[52 Fed. 641; 9 U. S. App. 34] 3: 244
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[73 Fed. 23; 41 U. S. App. 117] 19: 353
- Effect of certifying depositor's note. [74 Fed. 276; 38 U. S. App. 674] 20: 181
- Teller acts for bank, not depositor, in handing bookkeeper memorandum of amounts chargeable to depositor's account. [95 Fed. 87] 36: 659
- Bank responsible for depositor's money taken by teller without authority. Id.
- Bank chargeable with notice of depositor's agent's want of authority to have money transferred from account. Id.
- When check on bank sufficiently drawn in principal's name.  
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- Agent's power to bind principal by indorsing for deposit check forged by him. Id.
- Bank protected in paying check to agent authorized to draw checks for use of principal. Id.
- Liability on check forged by agent of nonresident company. Id.
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- Liability of authorized agent indorsing and depositing forged check. Id.
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[79 Fed. 705; 49 U. S. App. 153] 25: 150
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[61 Fed. 491; 17 U. S. App. 502] 9: 582
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- Bank, bailee of proceeds of checks indorsed "for deposit."  
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[63 Fed. 773; 26 U. S. App. 237] 11: 415
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- Special deposit of notes, mistake in certificate issued for, rights of parties..  
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- Promise to pay check, what constitutes. [51 Fed. 168; 4 U. S. App. 537] 2: 145
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- Bank put on inquiry as to corporate officer's authority to draw draft.  
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[79 Fed. 296; 49 U. S. App. 67] 24: 597
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[59 Fed. 857; 19 U. S. App. 455] 8: 320
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[48 Fed. 271; 3 U. S. App. 7] 1: 62
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[56 Fed. 967; 16 U. S. App. 1] 6: 183  
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[55 Fed. 894; 5 U. S. App. 376] 5: 304  
When item collected for correspondence sufficiently traced for recovery from receiver. [94 Fed. 442] 36: 307  
Recovery by transmitting bank from receiver of collecting bank, when traced to his possession. Id.  
Ownership of proceeds of checks indorsed "For deposit." [50 Fed. 647; 5 U. S. App. 14; 17 L. R. A. 291] 1: 598  
Check by depositor to indemnify president, charged to latter, not special deposit entitling maker to preference. [89 Fed. 266; 60 U. S. App. 561] 32: 198  
Trust fund created by check by general depositor in trustee's favor. [88 Fed. 375; 60 U. S. App. 372] 31: 562  
Security for present advances valid, though joined with void agreement for security of existing debts. [91 Fed. 326; 63 U. S. App. 412] 33: 542  
Loaning bank's authority to hold deposit balance standing to borrowing bank's credit. [64 Fed. 707; 26 U. S. App. 382] 12: 411  
Deposit of public funds on which interest payable on same footing as other deposits. [99 Fed. 900] 40: 155

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- Right to preference for amount of draft deposited after insolvency.  
[75 Fed. 771; 43 U. S. App. 617] 21: 514
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[51 Fed. 506; 3 U. S. App. 207; 17 L. R. A. 462] 2: 349
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[64 Fed. 832; 26 U. S. App. 386] 12: 430

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- Crediting claims against national bank with collections from securities.  
[59 Fed. 372; 16 U. S. App. 465] 8: 155
- National bank, proving whole claim without reference to collateral.  
[75 Fed. 148; 41 U. S. App. 529] 21: 282
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[79 Fed. 189; 48 U. S. App. 235] 24: 476
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[75 Fed. 148; 41 U. S. App. 529] 21: 282
- Necessity of joining receiver as party to enforce claim against bank.  
[79 Fed. 189; 48 U. S. App. 235] 24: 476
- Receiver not a necessary party to actions pending at time of appointment.  
[98 Fed. 151] 38: 682
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[59 Fed. 372; 16 U. S. App. 465] 8: 155
- Liability for interest on claim improperly disallowed by receiver.  
[94 Fed. 705] 36: 432

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- Liability of receiver for tax on stockholder's shares.  
[91 Fed. 93; 62 U. S. App. 638] 33: 353
- Power of state to tax bank chartered by Congress. Id.
- Suit for tax on shares.  
[55 Fed. 26; 5 U. S. App. 253] 5: 26
- Provision against taxing national bank shares higher than other "moneyed capital" in hands of individuals.  
[100 Fed. 24] 40: 254
- Taxing national bank shares higher than state statute allows on bonds and evidences of debt of corporations owned by residents of state. Id.
- Enjoining collection, from bank, of taxes on stock payable by stockholders.  
[65 Fed. 856; 25 U. S. App. 144] 13: 177
- Estoppel to deny liability to taxation on stock given in by cashier.  
[90 Fed. 214; 61 U. S. App. 630] 32: 580

**Crimes.**

- False entry; entry of overdraft. [82 Fed. 904; 49 U. S. App. 605] 27: 140
- Excess over deposit required to be reported as overdraft. [97 Fed. 35] 38: 37
- Making false report of condition of national bank without request from comptroller. Id.
- Misappropriation of funds, deposit of fictitious checks, proof necessary. Id.
- Fraudulent misapplication of funds, payment of overdraft. Id.
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[87 Fed. 701; 59 U. S. App. 663] 31: 202
- Sufficiency of indictment to charge cashier as principal in directing false entries made.  
[94 Fed. 127] 36: 105
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[82 Fed. 904; 49 U. S. App. 605] 27: 140
- Sufficiency of allegation of conversion of bank money by president.  
[97 Fed. 208] 38: 115
- Sufficiency of indictment charging president with having false entry made in books. Id.
- Conviction of aiding officer to embezzle funds after principal's death.  
[87 Fed. 446; 58 U. S. App. 243] 31: 44
- No necessity for proving allegation that money embezzled lawful legal-tender money.  
[91 Fed. 494; 62 U. S. App. 550] 33: 652



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- Evidence of president's knowledge of cashier's speculations admissible. [87 Fed. 701; 59 U. S. App. 663] 31: 202
- Necessity as to proving wrongful intent of bank officer in making false entries in both particulars charged. [97 Fed. 208] 38: 115
- False entries; fictitious deposits to deceive examiner. [94 Fed. 127] 36: 105
- Inference from finding as to intent with which false entries made in bank books by officer. Id.
- Admission of expert testimony of meaning of entries in report not prejudicial. [97 Fed. 35] 38: 37
- Admissibility of letter written by comptroller to national bank president and removed from latter's private box in prosecution for making false report. Id.
- Admissibility of prior reports of president on prosecution for making false reports. Id.
- Admissibility of books of national bank on prosecution for making false report of its condition. Id.
- Presumption that books of national bank properly kept rendering them admissible in prosecution for making false report. Id.
- Evidence of defendant's reputation for honesty and integrity limited to time bank failed. [87 Fed. 701; 59 U. S. App. 663] 31: 202
- Admission of evidence to show intent, generally. [82 Fed. 904; 49 U. S. App. 605] 27: 140
- Correctness of instruction as to presumption of bank president's knowledge of account on which checks certified. [87 Fed. 701; 59 U. S. App. 663] 31: 202
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Legitimation of, by parents' marriage, does not affect property rights. [68 Fed. 43; 29 U. S. App. 651; 33 L. R. A. 759] 15: 201

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Personal notice of acceptance of bid for public contract required. [69 Fed. 819; 32 U. S. App. 607] 16: 447

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**BILL OF EXCEPTIONS.**

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- As prima facie evidence of title, when overcome. Id.
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**BILLS AND NOTES.**

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- Priority as between two notes in common security; payment or sale. [74 Fed. 769; 40 U. S. App. 75] 21: 83
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[52 Fed. 191; 6 U. S. App. 312; 17 L. R. A. 595] 3: 1

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[81 Fed. 45; 53 U. S. App. 359; 43 L. R. A. 419] 26: 320

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[52 Fed. 191; 6 U. S. App. 312; 17 L. R. A. 595] 3: 1

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[85 Fed. 120; 55 U. S. App. 747] 29: 45

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[86 Fed. 742; 58 U. S. App. 674] 30: 409

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[95 Fed. 23] 36: 633

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[90 Fed. 545; 61 U. S. App. 102] 33: 169

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[63 Fed. 371; 24 U. S. App. 188] 11: 240

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[87 Fed. 637; 57 U. S. App. 18] 31: 172

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Sufficiency of consideration for acceptance.  
[58 Fed. 957; 16 U. S. App. 245] 7: 593

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Note assuming payment of obligation to pay gambling debt. Id.

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[86 Fed. 502; 58 U. S. App. 627] 30: 221

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[54 Fed. 848; 2 U. S. App. 568] 4: 609

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[63 Fed. 26; 22 U. S. App. 493] 11: 16

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 [66 Fed. 887; 32 U. S. App. 15] 14: 273

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 [52 Fed. 191; 6 U. S. App. 312; 17 L. R. A. 595] 3: 1

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 [65 Fed. 58; 27 U. S. App. 541] 12: 517

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 [70 Fed. 227; 28 U. S. App. 559; 30 L. R. A. 189] 17: 79

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 [87 Fed. 669; 59 U. S. App. 532] 31: 190

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 [52 Fed. 191; 6 U. S. App. 312; 17 L. R. A. 595] 3: 1

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 [85 Fed. 120; 55 U. S. App. 747] 29: 45

Corporation no power to make. [86 Fed. 742; 58 U. S. App. 674] 30: 409

Right of receiver of national bank to recover on note given for bank's accommodation. [85 Fed. 407; 52 U. S. App. 577] 29: 229

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 [85 Fed. 536; 56 U. S. App. 523] 29: 330

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 [70 Fed. 567; 37 U. S. App. 419] 17: 222

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For purchase price of personalty, by purchaser paying first notes by check and giving new ones of similar amount. [69 Fed. 302; 37 U. S. App. 266] 16: 232

Renewal of note secured by pledge. [53 Fed. 41; 10 U. S. App. 415] 3: 418

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 [92 Fed. 274; 63 U. S. App. 173] 34: 338

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 [87 Fed. 157; 57 U. S. App. 618] 30: 584

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 [92 Fed. 274; 63 U. S. App. 173] 34: 338

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Renewal of pledged note. [53 Fed. 41; 10 U. S. App. 415] 3: 418

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 [67 Fed. 837; 21 U. S. App. 658] 15: 33

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 [65 Fed. 341; 22 U. S. App. 609] 12: 643

Pledgee's right to put notes into judgment and have proceeds paid into court.  
 [67 Fed. 837; 21 U. S. App. 658] 15: 33

Right of pledgee to enforce, regardless of maturity of principal note.  
 [85 Fed. 536; 56 U. S. App. 523] 29: 330

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Pledge of note by payee as security for a note of his own having a longer time to run, as evidence of an extension agreement. Id.

Priority as between notes in common security; note paid, but indorsed without recourse and pledged after maturity as substitute for other securities.

[74 Fed. 769; 40 U. S. App. 75] 21: 83

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Note payable to maker's order and indorsed in blank.

[50 Fed. 260; 7 U. S. App. 194] 1: 510  
[57 Fed. 457; 13 U. S. App. 481] 6: 423

Indorsement by one to whom note assigned without indorsement.

[70 Fed. 227; 28 U. S. App. 559; 30 L. R. A. 189] 17: 79

Indorsement without recourse, after maturity, to stranger; payment or transfer.

[83 Fed. 866; 55 U. S. App. 233] 28: 174

Equitable title of assignee of unindorsed note.

[87 Fed. 669; 59 U. S. App. 532] 31: 190

Negotiable note transferred without indorsement becomes non-negotiable. Id.

Liability of one indorsing draft below forged indorsement.

[64 Fed. 703; 26 U. S. App. 377] 12: 407

Liability of authorized agent indorsing and depositing forged check in bank.

[97 Fed. 181] 38: 108

Indorsement without recourse, payment as distinguished from sale.

[74 Fed. 769; 40 U. S. App. 75] 21: 83

**—Who are bona fide holders.**

Extending credit on preceding indebtedness.

[77 Fed. 532; 45 U. S. App. 219] 23: 274

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[85 Fed. 536; 56 U. S. App. 523] 29: 330

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[52 Fed. 98; 2 U. S. App. 282; 18 L. R. A. 201] 2: 637

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[66 Fed. 263; 27 U. S. App. 640] 13: 433

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[71 Fed. 489; 34 U. S. App. 472] 19: 94

No presumption that purchaser knew of existing defenses. Id.

Effect of irregular indorsement as notice of its own accommodation character.

[85 Fed. 120; 55 U. S. App. 747] 29: 45

Indorsee of notes secured by mortgage as collateral security to debenture bonds issued by indorser.

[99 Fed. 18] 40: 47

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[52 Fed. 98; 2 U. S. App. 282; 18 L. R. A. 201] 2: 637

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[52 Fed. 379; 8 U. S. App. 99] 3: 149

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[64 Fed. 985; 66 Fed. 518; 27 U. S. App. 605, 750] 13: 472

Bank, notes procured by president by fraud and without consideration.

[55 Fed. 905; 17 U. S. App. 1; 20 L. R. A. 554] 5: 311

Bank or its receiver, of note borrowed by president for deposit at clearing-house.

[64 Fed. 311; 28 U. S. App. 95] 12: 125

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[78 Fed. 281; 41 U. S. App. 637] 24: 88

What constitutes payment by indorser, depriving indorsee of character of bona fide holder.

[84 Fed. 119; 55 U. S. App. 570] 28: 297

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[85 Fed. 120; 55 U. S. App. 747] 29: 45

Effect of indorsement subsequent to payee's, as notice of ownership.

[78 Fed. 281; 41 U. S. App. 637] 24: 88

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Creditor's right to receive from debtor without inquiry, bank draft drawn to order. [94 Fed. 30; 45 L. R. A. 822] 36: 56

Payees of drafts drawn by bank president on bank funds, for margins, put on inquiry as to president's authority. Id.

Right to presume that corporate officer's authority not exceeded in executing. [94 Fed. 335] 36: 370

Bank put on inquiry as to corporate officer's authority to draw draft. [86 Fed. 541; 56 U. S. App. 729] 30: 247

Note executed by building and loan association, presumption as to authority. [81 Fed. 45; 53 U. S. App. 359; 43 L. R. A. 419] 26: 320

Transferee of unindorsed note put on inquiry as to equitable defenses. [87 Fed. 669; 59 U. S. App. 532] 31: 190

Status of one paying old and taking new note as bona fide holder of collateral. [52 Fed. 641; 9 U. S. App. 34] 3: 244

Averring purchase for value, before maturity, not necessary to aver ignorance. [58 Fed. 321; 17 U. S. App. 213] 7: 248

Sufficiency of averments as to bona fides. Id.

**—Rights of, and defenses available against, transferees.**

Accommodation paper; knowledge of its character. [77 Fed. 532; 45 U. S. App. 219] 23: 274

Payee a foreign corporation; nonperformance of condition of doing business. [58 Fed. 321; 17 U. S. App. 213] 7: 248

Indorsement "without recourse" no notice of defenses. [99 Fed. 18] 40: 47

Maker no right to resist enforcement of mortgage secured, for illegality of consideration of note, where such defense not available as defense to note. Id.

Acceptance payable out of specified fund; state of accounts between drawer and acceptor. [58 Fed. 957; 16 U. S. App. 245] 7: 593

Fraud in procuring acceptance. Id.

Note given in renewal for illegal one. [55 Fed. 223; 6 U. S. App. 566] 5: 83

Rights of transferee of notes as security for antecedent debt. [99 Fed. 18] 40: 47

Accommodation acceptance by corporation. [52 Fed. 191; 6 U. S. App. 312] 3: 1

Note void for usury. [59 Fed. 857; 19 U. S. App. 455] 8: 320

Effect of secretly including as principal, usurious interest, under statute making note voidable to extent of usury. [99 Fed. 18] 40: 47

Failure of consideration after sale by payee. [54 Fed. 32; 6 U. S. App. 503] 4: 169

Creditor receiving bank draft from debtor, in effect an indorsee. [94 Fed. 30; 45 L. R. A. 822] 36: 56

Purchase-money note made payable to bank at request of seller; defenses against bank. [81 Fed. 902; 53 U. S. App. 399] 26: 673

Right of maker of note assigned without indorsement as to set-off. [87 Fed. 669; 59 U. S. App. 532] 31: 190

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Necessity of special plea of failure of consideration and lack of good faith. [60 Fed. 730; 23 U. S. App. 300] 9: 256

[60 Fed. 736; 23 U. S. App. 309] 9: 261

**Release of parties.**

Accepting compromise notes in lieu of indorser's liability. [75 Fed. 852; 43 U. S. App. 698] 21: 538

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Release of maker signing as surety.

[60 Fed. 721; 23 U. S. App. 280] 9: 246

What releases surety from liability.

[92 Fed. 828] 35: 28

For purchase price of property sold by receiver; what will release surety on.

[92 Fed. 838] 35: 38

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[77 Fed. 949; 39 U. S. App. 483] 23: 586

**Acceptance and payment of drafts and checks.**

Acceptance payable out of special fund; claim to fund by third person.

[58 Fed. 957; 16 U. S. App. 245] 7: 593

Contract to pay check, what constitutes.

[51 Fed. 168; 4 U. S. App. 557] 2: 145

Refusal to accept check drawn with exchange.

Id.

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Id.

Refusal of principal to accept draft drawn by agent.

[62 Fed. 112; 26 U. S. App. 133] 10: 295

Principal's refusal to accept draft drawn by agent; liability as for loan.

Id.

Promise to accept drafts, who may maintain action for breach of.

Id.

Law governing agreement in one state to accept in other state drafts for purchase price of goods.

[72 Fed. 234; 38 U. S. App. 289] 18: 525

Effect of payment by bank of drafts with bill of lading attached as security.

[66 Fed. 862; 30 U. S. App. 25] 14: 267

Guaranty of payments of drafts made under letter of credit.

[91 Fed. 476; 62 U. S. App. 538] 33: 641

**Presentment, demand, notice, protest.**

Liability of bank for nonpresentment of indorsed note deposited with it.

[63 Fed. 26; 22 U. S. App. 493] 11: 16

Express demand in explicit terms unnecessary.

[88 Fed. 217; 60 U. S. App. 209] 31: 487

Notice necessary, though indorser knows maker insolvent.

[70 Fed. 468; 34 U. S. App. 148; 30 L. R. A. 513] 17: 203

Notice necessary, though indorsers constitute majority of directors of maker.

Id.

Note made out of state subject to statutory provision for notice of nonpayment.

Id.

Notice stating that holder looks to indorser for payment.

[69 Fed. 798; 32 U. S. App. 554] 16: 425

Certificate of protest admissible in evidence in Federal court.

Id.

By notary who is officer of bank.

Id.

**BLASTING.**

Whether contemplated when entering into contract for excavation, question for jury.

[87 Fed. 298; 59 U. S. App. 9] 30: 653

Assumption of risk by person voluntarily going on premises where blasting done.

[100 Fed. 244] 40: 366

Contributory negligence of person going to sleep on boat moored near where blasting done.

Id.

Effect of agreement, between contractor and navigation company, that latter use wharf on former's premises at own peril, on passenger's right to recover for injury from blasting.

Id.

**BOARD OF TRADE.**

Subscription for purchase of site for.

[51 Fed. 738; 6 U. S. App. 115; 19 L. R. A. 796] 2: 480

**BONA FIDE MORTGAGEE.**

See CHATTEL MORTGAGES.

**BONA FIDE PURCHASERS.**

- Of Bill of Lading, see CARRIERS.
- Of Bills and Notes, see BILLS AND NOTES.
- Of Certificate of Deposit, see CERTIFICATE OF DEPOSIT.
- Of Checks, see CHECKS.
- Of Corporate Bonds, see CORPORATIONS.
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- Of Vessel, see SHIPPING.
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- Of Patents, see PATENTS.
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- Rights as against Assignee in Bankruptcy, see BANKRUPTCY.
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**BONDS.**

- Rights, Liability, and Release of Sureties, see also PRINCIPAL AND SURETY.
- Bail, see BAIL.
- Appeal Bond, see APPEAL AND ERROR.
- Attachment Bond, see ATTACHMENT.
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- III. CARRIERS OF PASSENGERS.
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 [79 Fed. 931; 51 U. S. App. 106] 25: 244  
 Liability for storing inflammable goods in exposed position.  
 [71 Fed. 481; 34 U. S. App. 404] 19: 88  
 Evidence of carrier's knowledge of shipper's intention to sell on particular day.  
 [66 Fed. 868; 32 U. S. App. 60] 14: 153  
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 [68 Fed. 864; 30 U. S. App. 454] 16: 42  
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 [73 Fed. 755; 34 U. S. App. 691] 19: 668

**Limiting liability and time for filing claim.**

Necessity to bring exempting clause to shipper's notice.  
 [87 Fed. 444; 58 U. S. App. 18] 32: 485  
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 [66 Fed. 506; 24 U. S. App. 589; 30 L. R. A. 161] 14: 257  
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 [89 Fed. 131; 59 U. S. App. 499] 32: 173

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Effect of provision that cotton excepted from any clause on subject of fire, and making carrier liable as at common law for loss or damage thereto by fire. [98 Fed. 538] 39: 154

Against damage while in connecting carrier's possession. [92 Fed. 56; 63 U. S. App. 501] 34: 203

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Measure of damages against initial carrier for wilfully misrouting goods. [80 Fed. 846; 58 U. S. App. 173] 30: 430

Liability for connecting carrier's delay. [78 Fed. 745; 49 U. S. App. 52] 24: 300

Initial carrier's obligation terminated on delivery to terminal association, when. [87 Fed. 72; 56 U. S. App. 274] 30: 541

Initial carrier's liability continues until shipping directions delivered to connecting carrier. Id.

Delivery to other carrier, depositing on wharf. [84 Fed. 305; 51 U. S. App. 676] 28: 142

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Not liable after delivery to connecting line. [90 Fed. 467; 62 U. S. App. 231] 33: 611

Contract for carriage of goods over several lines, several as to each carrier. Id.

Initial carrier liable for breach of contract though rate given in violation of Interstate Commerce Law. [86 Fed. 846; 58 U. S. App. 173] 30: 430

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Duty to furnish suitable cars. [90 Fed. 467; 62 U. S. App. 231] 33: 611

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**CARRIERS—continued.**

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**Delay.**

In transportation, negligent.

[66 Fed. 868; 32 U. S. App. 60] 14: 153

Liability for destruction by fire during negligent delay.

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**III. CARRIERS OF PASSENGERS.**

Liability for injuries caused by negligence or torts of servants, see

Notes, 10: 466; 27: 651

Duty to protect passengers from dangerous fellow passengers, see

Notes, 4: 231; 10: 470

Liability for death caused by acts of agents or servants.

[50 Fed. 818; 2 U. S. App. 158] 1: 693

[60 Fed. 503; 13 U. S. App. 681] 9: 110

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[67 Fed. 209; 28 U. S. App. 375] 14: 368

Liability for injury to one riding on logging train.

[72 Fed. 739; 44 U. S. App. 347] 19: 168

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[74 Fed. 517; 41 U. S. App. 45; 33 L. R. A. 255] 20: 515

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[97 Fed. 900] 38: 541

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Paying engineer for extra time spent in running train as ratification of unauthorized use of train.

[65 Fed. 969; 27 U. S. App. 681] 13: 249

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[97 Fed. 140] 38: 79

**By elevator.**

Duty to give passenger opportunity to obtain balance.

[62 Fed. 139; 22 U. S. App. 325; 25 L. R. A. 33] 10: 306

Extent of rule requiring highest degree of care.

Id.

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**Who are passengers.**

Continuance of passenger relation, see

Note, 40: 437

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[53 Fed. 997; 12 U. S. App. 115] 4: 146

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[65 Fed. 969; 27 U. S. App. 681] 13: 249

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[67 Fed. 522; 32 U. S. App. 182; 28 L. R. A. 749] 14: 506

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[72 Fed. 739; 44 U. S. App. 347] 19: 168

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[70 Fed. 585; 44 U. S. App. 178; 30 L. R. A. 730] 17: 287

Passenger alighting at intermediate station used for discharge of passengers.

[88 Fed. 455; 60 U. S. App. 140] 32: 1

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[86 Fed. 292; 52 U. S. App. 708; 40 L. R. A. 746] 30: 58

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- Person temporarily leaving train or vessel, see Note, 40: 437  
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**Limiting liability.**

- For injury to passenger and for baggage, see also Note, 32: 301  
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 [59 Fed. 75; 16 U. S. App. 277] 8: 6  
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 own risk. [87 Fed. 420; 59 U. S. App. 55] 31: 157  
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 agreement. [86 Fed. 447; 57 U. S. App. 473] 32: 295  
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**Presumptions and burden as to negligence.**

- Burden of proof of negligence where passengers have been injured, see Note, 32: 23  
 Injury to passenger exercising reasonable care prima facie evidence of carrier's  
 liability. [92 Fed. 59; 63 U. S. App. 711] 34: 207  
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**Injury to passenger at station.**

- Assault by employee, see also Notes, 10: 446; 27: 654  
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 [76 Fed. 517; 46 U. S. App. 300] 22: 306  
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 [82 Fed. 869; 50 U. S. App. 249] 27: 264  
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 [53 Fed. 459; 10 U. S. App. 537] 3: 589  
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 [90 Fed. 709; 62 U. S. App. 429] 33: 251  
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 platform by which injury caused. [99 Fed. 911] 40: 174  
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- Implied invitation of passenger to enter baggage room.  
     [80 Fed. 278; 53 U. S. App. 22] 25: 413
- Passenger injured by fall of door in baggage room, questions of negligence for jury. Id.

**Tickets.**

- Defective ticket, ejection, remedy. [52 Fed. 197; 6 U. S. App. 298] 3: 23
- Ticket as conclusive evidence to conductor of passenger's rights.  
     [50 Fed. 496; 6 U. S. App. 95] 1: 544
- Passenger's failure to read ticket. Id.
- Authority of employees to modify ticket. Id.
- Limiting liability by provision of. [59 Fed. 75; 16 U. S. App. 277] 8: 6
- Mileage, verifying signature. [57 Fed. 822; 18 U. S. App. 279] 6: 597
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     [92 Fed. 59; 63 U. S. App. 711] 34: 207
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     [96 Fed. 929] 37: 628
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- Unstamped; ejection of passenger.  
     [70 Fed. 585; 44 U. S. App. 178; 30 L. R. A. 730] 17: 287

**Arresting or ejecting passengers.**

- Mental suffering as an element of damages, see Note, 11: 566
- Ejection of passenger, see also Notes, 10: 471; 27: 656
- Right to restrain or expel disorderly passenger, see Note, 4: 231
- Ejection of trespasser, see also Notes, 10: 474; 27: 657
- Liability of street railway company for conductor causing passenger's arrest.  
     [88 Fed. 437; 59 U. S. App. 588] 31: 573
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     [54 Fed. 468; 7 U. S. App. 626] 4: 441
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- Rudeness of conductor in ejecting passenger.  
     [50 Fed. 496; 6 U. S. App. 95] 1: 544
- Responsibility for conductor's unnecessary violence in ejecting passenger.  
     [57 Fed. 822; 18 U. S. App. 279] 6: 597
- Passenger wrongfully ejected may sue in contract or tort. Id.
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     [67 Fed. 662; 34 U. S. App. 14] 14: 612
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     [57 Fed. 822; 18 U. S. App. 279] 6: 597
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     [67 Fed. 662; 34 U. S. App. 14] 14: 612
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- Duty to stop trains at station, see Note, 14: 362
- Duty to stop at destination, regulations affecting.  
     [57 Fed. 481; 13 U. S. App. 540] 6: 454
- Statement by ticket agent as to train stopping at station.  
     [66 Fed. 709; 32 U. S. App. 67] 14: 358
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**CARRIERS—continued.**

- Damages for carrying past station. [52 Fed. 94; 2 U. S. App. 342] 2: 633  
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**Duty to trespassers on train.**

- See also Note, 31: 76  
 Ejection of, see Notes, 10: 474; 27: 657  
 Perceived to be in dangerous position. [91 Fed. 77; 63 U. S. App. 533] 33: 346  
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**Injury to stockman.**

- See also Note, 31: 166  
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 Immaterial whether or not he pays special fare. Id.  
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**Insane passenger.**

- Duty and degree of care to protect passenger from insane fellow passenger. [54 Fed. 116; 10 U. S. App. 677] 4: 221  
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- Duties and liabilities of sleeping-car companies, see Notes, 10: 335; 34: 386  
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 Whether passenger by open window in street car struck by iron post negligent, for jury. [60 Fed. 210; 13 U. S. App. 655] 8: 571  
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- Duty to exercise highest degree of care and skill to protect passenger. [97 Fed. 891] 38: 536
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- Carrier failing to make proper connection not bound to carry holder of second-class ticket on limited train. [50 Fed. 496; 6 U. S. App. 95] 1: 544
- Duty to maintain vestibule in reasonably safe condition. [76 Fed. 734; 40 U. S. App. 413] 22: 520
- Leaving outside door of vestibule open, optical illusion. Id.
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- Breaking apart of train and collision of parts, negligence. [67 Fed. 209; 28 U. S. App. 375] 14: 368
- Violently starting freight train after stopping at station. [92 Fed. 59; 63 U. S. App. 711] 34: 207
- Starting train before sufficient time for passenger to alight, and suddenly stopping again. [98 Fed. 963] 39: 364
- Liability for injury to passenger through negligence of persons unconnected with railroad company, constructing elevated tracks. [98 Fed. 694] 39: 237

**Contributory negligence—In general.**

- Only acts substantially or directly contributing to injury, contributory negligence. [97 Fed. 891] 38: 536
- When does not prevent recovery. [60 Fed. 694; 20 U. S. App. 400] 9: 219
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- Contributory negligence in standing on platform of railway car. Id.
- Leaving place assigned for passengers. [80 Fed. 361; 49 U. S. App. 279] 25: 486
- Passenger's belief that place is safe. Id.
- Violating rule as to place where passengers shall remain. Id.
- Standing on caboose platform at time of wreck. [67 Fed. 481; 32 U. S. App. 192] 14: 483
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- Right to assume when alighting that other train not switched across only practicable path without special warning. [88 Fed. 455; 60 U. S. App. 140] 32: 1
- Passenger caught between trains, custom. [76 Fed. 517; 46 U. S. App. 300] 22: 306
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## —Boarding, alighting, or falling from moving train; employee's advice or command.

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- Discrimination between connecting carriers, what constitutes.  
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[92 Fed. 1022] 35: 172
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[86 Fed. 407; 52 U. S. App. 732] 30: 142
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[63 Fed. 775; 27 U. S. App. 380; 26 L. R. A. 192] 11: 417

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[61 Fed. 158; 15 U. S. App. 479] 9: 409
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[74 Fed. 715; 41 U. S. App. 453] 21: 51
- Matters to be considered in determining whether differences are just or unjust.  
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[74 Fed. 803; 43 U. S. App. 308] 21: 103
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[99 Fed. 52] 39: 413
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[74 Fed. 803; 43 U. S. App. 388] 21: 103
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[57 Fed. 948; 20 U. S. App. 1] 6: 653
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Liability for injuries to passengers on other vessel, though both vessels at fault.

[70 Fed. 874; 44 U. S. App. 26; 31 L. R. A. 715] 18: 366

Insurance company paying full value of vessel injured by, subrogated to rights of insured.

[94 Fed. 686] 37: 190

**COLLISION—continued.**

- Liability of city for negligence in towing vessel.  
[62 Fed. 617; 17 U. S. App. 642] 10: 552
- Rank of lien for damages arising from.  
[49 Fed. 577; 9 U. S. App. 15] 1: 379
- Necessity of alleging that drowning by collision on high seas occurred on French vessel to make French law applicable.  
[100 Fed. 655] 40: 625

**Failure to render assistance.**

- Liability of colliding vessel for seaman's death from failure to render assistance.  
[70 Fed. 270; 33 U. S. App. 297] 17: 90
- Circumstances excusing schooner from tendering assistance to barge after collision.  
[76 Fed. 595; 33 U. S. App. 599] 22: 327

**II. RULES AND REGULATIONS FOR PREVENTING; IN GENERAL.**

- Collision rules, see Notes, 28: 532; 29: 368
- Sufficiency of tiller rope, inevitable accident.  
[61 Fed. 120; 22 U. S. App. 69] 9: 393  
[58 Fed. 427; 14 U. S. App. 655] 7: 285
- Sufficiency of crew.  
[58 Fed. 427; 14 U. S. App. 655] 7: 285
- Duty of master of sailing vessel in port like Chicago.  
[84 Fed. 365; 53 U. S. App. 700] 28: 428
- Violating state statute requiring vessels to keep in the center of river.  
[67 Fed. 365; 35 U. S. App. 215] 14: 418
- Turning temporarily from general course to avoid obstructions as departure from course.  
[82 Fed. 819; 54 U. S. App. 248] 27: 154
- Rule requiring steamships to keep to starboard in narrow channels governs in navigating Elizabeth river.  
[68 Fed. 395; 25 U. S. App. 271] 5: 490

**International rules.**

- When applicable, duty to change course.  
[53 Fed. 293; 11 U. S. App. 693] 3: 539
- Navigation on Great Lakes.  
[62 Fed. 71; 22 U. S. App. 242] 10: 262
- Torch on sailing vessel on high seas and coast waters.  
[49 Fed. 172; 7 U. S. App. 20] 1: 224  
[50 Fed. 234; 8 U. S. App. 1] 1: 503
- Governing vessels approaching each other in channels.  
[74 Fed. 906; 33 U. S. App. 531] 21: 169

**Inspector's and supervisor's rules.**

- Conflict between inspector's rules and rules of navigation.  
[49 Fed. 469; 1 U. S. App. 64] 1: 319
- Vessels navigating lower harbor of Boston subject to supervising inspector's rules.  
[74 Fed. 653; 33 U. S. App. 505] 20: 585
- Query whether American vessels crossing and recrossing Canadian boundary subject to supervisor's rules.  
[82 Fed. 819; 54 U. S. App. 248] 27: 164

**Excuse for disregarding.**

- Excuse for disregarding inspector's rule.  
[58 Fed. 251; 14 U. S. App. 684] 7: 216
- Custom as ground for violating navigation rules.  
[74 Fed. 261; 44 U. S. App. 353] 20: 419
- Excuse for nonobservance, exercising honest judgment.  
[77 Fed. 226; 33 U. S. App. 647] 23: 123

**III. BETWEEN STEAMERS.**

- Cause of collision.  
[50 Fed. 587; 1 U. S. App. 154] 1: 586
- Keeping close to shore and passing starboard to starboard.  
[63 Fed. 476; 26 U. S. App. 152] 11: 519

**COLLISION—continued.**

Reversing gear of engine clamped fast to rock arm, gross fault.

[84 Fed. 504; 55 U. S. App. 358] 28: 472

Negligence in discovering other vessels and in failing to notice lights and position and by mistaking signal.

[74 Fed. 316; 33 U. S. App. 443] 20: 214

Steamer assuming all risks by signaling that she will go to port, contrary to navigation rule.

[74 Fed. 261; 44 U. S. App. 353] 20: 419

Between steamboat in narrow channel and tug crossing channel without answering signal.

[55 Fed. 350; 14 U. S. App. 709] 14: 663

**Course; departing from, changing, turning wrong way.**

Proper course.

[48 Fed. 764; 1 U. S. App. 32] 1: 87

Anticipating departure from statutory course without signals.

[58 Fed. 813; 20 U. S. App. 105] 7: 495

Departing from customary course, failure of other vessel to give timely signal.

[74 Fed. 656; 26 U. S. App. 783] 21: 49

Being out of proper course in path of vessels going in other direction.

[87 Fed. 948; 59 U. S. App. 108] 31: 315

Smaller vessel suddenly sheering into larger at moment of passing.

[100 Fed. 663] 40: 634

Sudden and unexpected change of course, proximate cause of collision.

[66 Fed. 77; 25 U. S. App. 153] 13: 337

Turning to left as other vessel turns to right.

[87 Fed. 948; 59 U. S. App. 108] 31: 315

When rule requiring steamers approaching obliquely to pass to the right not inapplicable.

[82 Fed. 819; 54 U. S. App. 248] 27: 154

Failure to promptly make turn to port at bend in channel after agreement by signal.

[100 Fed. 502] 40: 517

Starboarding helm instead of porting as required by navigation rules.

[87 Fed. 948; 59 U. S. App. 108] 31: 315

Rule that vessel having other on starboard side keep out of the way not applicable to vessels coming around bends in channel.

[100 Fed. 502] 40: 517

**Duty of one when other at fault or helpless.**

Duty of one as to changing course upon seeing mistaken maneuver of other.

[48 Fed. 764; 1 U. S. App. 32] 1: 87

Failure to reverse on perceiving other vessel's failure to answer helm, and in not considering influence of tide rip known to exist.

[74 Fed. 261; 44 U. S. App. 353] 20: 419

Insisting on keeping on right side of channel after other vessel refuses to assent to signals.

[68 Fed. 395; 25 U. S. App. 271] 15: 490

**Privileged vessel; which is; duty of.**

Special circumstances affecting right of way.

[53 Fed. 459; 10 U. S. App. 537] 3: 539

Duty of privileged vessel crossing other's track to stop and reverse.

[92 Fed. 408; 63 U. S. App. 781] 34: 421

Relative responsibility when burdened steamer persists in crossing bow of privileged steamer contrary to rules.

[84 Fed. 508; 55 U. S. App. 274] 28: 476

Meeting on crossing courses; rules 19 and 23; where and to what vessels applicable.

Id.

Right of privileged steamer to maintain speed and course.

[82 Fed. 819; 54 U. S. App. 248] 27: 154

Pressing too closely upon course of preferred steamer.

Id.

**Duty to keep out of way.**

Vessel having crossing vessel on starboard side bound to keep out of the way.

[74 Fed. 261; 44 U. S. App. 353] 20: 419

Approaching on crossing course; conflict between inspector's rules and rules of navigation.

[49 Fed. 469; 1 U. S. App. 64] 1: 319

**COLLISION—continued.**

- Duty of naphtha launch crossing steamer's track to keep out of way.  
[92 Fed. 408; 63 U. S. App. 781] 34: 421
- Wrong side of channel.**
- Taking wrong side of channel; failure to stop and reverse.  
[52 Fed. 885; 8 U. S. App. 138] 3: 330
- Insisting on keeping wrong side of channel.  
[68 Fed. 395; 25 U. S. App. 271] 15: 490

**Collision with ferry boat.**

See also VII.

- Proper course of propeller and ferryboat in North river.  
[49 Fed. 469; 1 U. S. App. 64] 1: 319
- Right of ferryboat to keep her course notwithstanding signals of propeller. *Id.*
- Duty of ferryboat to reverse engines when propeller takes wrong course. *Id.*
- Ferryboat's duty to observe rules of navigation when out in river.  
[92 Fed. 939] 35: 96
- Ferryboat paying no attention to movements of signaling steamship on star-board bow.  
[66 Fed. 75; 26 U. S. App. 694] 13: 335
- Ferryboat about to make slip slowing down instead of maintaining speed.  
[68 Fed. 507; 35 U. S. App. 61] 15: 538
- Coming out of slip; duty as to steamer coming down river.  
[92 Fed. 1021] 35: 167
- Between ferryboats, held on conflicting evidence that one maintained course up river and did not turn in under other's stern.  
[81 Fed. 966; 51 U. S. App. 507] 27: 28
- Steamboat maintaining excessive speed in harbor liable for collision.  
[92 Fed. 1021] 35: 167
- Tug held at fault for navigating with unwieldy tow near ferryboat slip.  
[78 Fed. 924; 45 U. S. App. 544] 24: 411
- Ferryboat proceeding at moderate rate and reversing as soon as aware of tow behind tug, held not at fault. *Id.*
- Tug with incompetent wheelsman swept against overtaking ferryboat.  
[67 Fed. 365; 35 U. S. App. 215] 14: 418
- Ferryboat coming out of slip not excused for failure to observe descending steamer by presence of tug and tow.  
[92 Fed. 1021] 35: 167
- Tug running too near ferryboat slip not liable for collision not proximately resulting.  
[86 Fed. 924; 57 U. S. App. 247] 30: 494
- Tug running too near ferryboat slip. *Id.*
- Tug navigating too near ferryboat slip not cause of collision with ferryboat. *Id.*

**IV. BETWEEN SAILING VESSELS.**

- Failure to overcome leeway when bound to keep course.  
[91 Fed. 173; 62 U. S. App. 361] 33: 435
- Schooner having right of way changing course after vessels within sight of each other.  
[98 Fed. 1000] 39: 377
- Duty of brig sailing free to avoid schooner closehauled.  
[50 Fed. 331; 1 U. S. App. 138] 1: 519
- Duty when both sailing free.  
[50 Fed. 478; 1 U. S. App. 166] 1: 534
- Duty of vessel sailing free to change course on meeting closehauled vessel and maintain changed course.  
[70 Fed. 270; 33 U. S. App. 297] 17: 90
- Vessel closehauled luffing half point on approaching vessel running free.  
[96 Fed. 999] 37: 658
- Duty of vessel sailing free on port tack to keep out of way of closehauled vessel.  
[66 Fed. 1020; 33 U. S. App. 35] 14: 225
- [67 Fed. 612; 35 U. S. App. 105] 14: 573
- Schooner making unnecessarily wide circle in turning in river, when other schooner approaching.  
[92 Fed. 522; 63 U. S. App. 293] 34: 513

C. C. A.—10.

## COLLISION—continued.

## V. BETWEEN STEAM AND SAIL.

That sloop provided with auxiliary steam power not in use when colliding with steamer, not make sloop steam vessel.

[89 Fed. 957; 61 U. S. App. 207] 32: 452

Duty of steamer to slacken speed until course of bark ascertained.

[49 Fed. 172; 7 U. S. App. 20] 1: 224

Duty of sail in vicinity of steam as to running out her tacks.

[49 Fed. 167; 1 U. S. App. 11] 1: 219

Failure of tug to keep proper lookout, sloop changing tack.

Id.

Steamer at fault in porting after passing intersection of courses.

[50 Fed. 234; 8 U. S. App. 1] 1: 503

Sail taking well-known navigated channel instead of shallower water.

[63 Fed. 289; 22 U. S. App. 473, 546] 11: 196

Schooner tacking across steamer's bow in narrow channel.

[61 Fed. 862; 21 U. S. App. 239] 10: 127

When steamer charged with notice that schooner is approaching on crossing course.

[84 Fed. 906; 55 U. S. App. 343] 28: 562

Changing helm to starboard at time of collision to ease blow.

[63 Fed. 289; 22 U. S. App. 473, 546] 11: 196

Steamer's failure to come down channel on starboard of midchannel.

[66 Fed. 604; 35 U. S. App. 6] 13: 653

Steam at fault in failing to avoid sail: preponderance of evidence.

[57 Fed. 251; 14 U. S. App. 513] 6: 324

Held, on conflicting evidence and the probabilities, that schooner was at fault.

[84 Fed. 365; 53 U. S. App. 700] 28: 428

**Change of course.**

Schooner unable to direct course, steamer failing to change course.

[59 Fed. 300; 20 U. S. App. 142] 8: 132

Held, that schooner must have changed her course.

[79 Fed. 976; 51 U. S. App. 128] 25: 264

Steamer right to rely on sailing vessel keeping course after signals exchanged.

[89 Fed. 757; 50 U. S. App. 435] 32: 331

Change of course by sail on crossing courses before risk of collision involved.

[66 Fed. 604; 35 U. S. App. 6] 13: 653

Sail's change of course when in danger from steamer's wrong maneuver.

[70 Fed. 113; 34 U. S. App. 261; 30 L. R. A. 336] 17: 1

**Duty to keep out of way.**

Duty of steamer with tow to keep clear of sail.

[84 Fed. 906; 55 U. S. App. 343] 28: 562

Duty of steamer with unwieldy tow to keep out of way of approaching sail.

[70 Fed. 113; 34 U. S. App. 261; 30 L. R. A. 336] 17: 1

Steamer's failure to keep out of way of sail entering river from lake.

[63 Fed. 289; 22 U. S. App. 473, 546] 11: 196

Steamer's failure to allow sufficient margin for passing in open sea.

[68 Fed. 393; 35 U. S. App. 327] 15: 488

## VI. VESSELS IN TOW.

See also III., **Collision with ferryboat**; and VII.

Right of owner of tug to recover for injury to tow.

[51 Fed. 527; 1 U. S. App. 244] 2: 365

Injury to tow by displacement waves from steamship, duty of tug.

[48 Fed. 730; 1 U. S. App. 16] 1: 78

Duty of tug to ascertain whether vessel approaching on starting into river from behind piers.

[87 Fed. 574; 58 U. S. App. 99] 31: 111

## COLLISION—continued.

- Steamer negligent in not waiting to see if second barge in tow.  
[86 Fed. 697; 57 U. S. App. 187] 30: 343
- Tug in Hell Gate with flood tide failing to stop or slow on meeting steam lighters.  
[58 Fed. 813; 20 U. S. App. 105] 7: 495
- Duty of tug when approaching sailing vessel in plain sight in open sea.  
[93 Fed. 841] 35: 628
- Steamer colliding with barge in tow in narrow channel.  
[74 Fed. 906; 33 U. S. App. 531] 21: 169
- Duty of tug with tow to slow down before entering fog.  
[89 Fed. 757; 50 U. S. App. 435] 32: 331
- Steamer departing from statutory rule responsible if tug tries to obey signals.  
[49 Fed. 479; 1 U. S. App. 123] 1: 324
- Maintaining excessive speed near end of pier obstructing view.  
[53 Fed. 670; 14 U. S. App. 711] 13: 684
- Miscalculation of space necessary for turn of barge in going through slack water.  
[80 Fed. 414; 51 U. S. App. 94] 25: 515
- Duty of steamer meeting tug with tow to avoid collision by porting.  
[63 Fed. 1023; 26 U. S. App. 148] 12: 4
- Sheer of other vessel not attributable to suction caused by tug.  
[52 Fed. 403; 6 U. S. App. 153] 3: 165
- Tug not in fault for failing to anticipate other vessel's sheer. Id.
- Peculiarities of local navigation, failure to take extraordinary precautions.  
[53 Fed. 846; 2 U. S. App. 484] 4: 50
- Tug taking wrong side of channel slowing so as to lose control of tow.  
[56 Fed. 315; 6 U. S. App. 641] 5: 516
- Tug attempting to pass to windward of schooner and then changing and trying to pass on other side.  
[76 Fed. 595; 33 U. S. App. 599] 22: 327
- Tug signaling intention to cross bow of other tug when slackening speed and passing under stern safer.  
[98 Fed. 747] 39: 258
- Tug negligent in choosing side for passing light ship, tow negligent in delaying to port her helm.  
[79 Fed. 445; 50 U. S. App. 11] 25: 32
- Vessel insisting on passing to right when attended with danger.  
[92 Fed. 207; 63 U. S. App. 289] 34: 302
- Tug following custom in dropping down river stern foremost to place where room to turn.  
[91 Fed. 431; 63 U. S. App. 267] 33: 562
- Failure of steamer to slow up inferred from damage from swell.  
[61 Fed. 220; 17 U. S. App. 508] 9: 455
- Between two tows, which tug at fault, conflicting evidence.  
[50 Fed. 782; 3 U. S. App. 143] 1: 666
- Tow sinking schooner at anchor during storm after opportunity for tug and tows to anchor.  
[100 Fed. 128] 40: 312
- Evidence insufficient to show that collision of tug with dock due to negligence of tug.  
[80 Fed. 153; 53 U. S. App. 189] 25: 318
- Between tows racing for tow held on conflicting evidence that one was solely in fault.  
[81 Fed. 971; 54 U. S. App. 113] 27: 33
- Duty in respect of connection and communication between tug and tow; hawser.**
- Collision of unbridled tow with pier during sudden sheer while near side of channel, to avoid other tug and tow.  
[99 Fed. 1004] 40: 212
- Taking single schooner through Hell Gate on hawser 250 feet long.  
[58 Fed. 813; 20 U. S. App. 105] 7: 495
- Fastening several scows to tug so that headlines of one bear strain of all.  
[67 Fed. 158; 26 U. S. App. 482] 14: 355
- Power of court to condemn usage of towing with long hawser in narrow channel.  
[74 Fed. 906; 33 U. S. App. 531] 21: 169



**COLLISION—continued.**

- Failure to provide efficient means of communication between tug and tow as negligent navigation. [84 Fed. 910; 50 U. S. App. 282] 29: 365
- Delay in throwing off towline when barge commences to sheer across course of approaching vessel. [78 Fed. 824; 47 U. S. App. 368] 24: 353
- Tug with long tows entering dangerous slew in dense fog. [86 Fed. 697; 57 U. S. App. 187] 30: 343
- Following too closely, tug with tow making wrong landing. [64 Fed. 137; 28 U. S. App. 44] 12: 73
- Tug towing two barges of 70 to 80 fathoms each. [86 Fed. 697; 57 U. S. App. 187] 30: 343
- Tug cutting hawser to avert collision with approaching steamer. [87 Fed. 574; 58 U. S. App. 99] 31: 111
- Failure to release line in time to prevent tow colliding with schooner. [63 Fed. 289; 22 U. S. App. 473, 546] 11: 196
- Breaking hawser. [62 Fed. 617; 17 U. S. App. 642] 10: 552
- High degree of care required in case of long tows. [86 Fed. 697; 57 U. S. App. 187] 30: 343

**Duty to keep out of way.**

- Extreme care required from tug with three tows navigating ocean at night. [98 Fed. 138] 38: 675
- Duty of tug with tow to keep out of steamer's course. [63 Fed. 1023; 26 U. S. App. 148] 12: 4
- Duty of steamer to keep out of way of tug with tows. [74 Fed. 572; 42 U. S. App. 100] 20: 660
- Tug bound to keep out of way of steamer on her starboard. [50 Fed. 129; 8 U. S. App. 9] 1: 489
- Collision of closehauled schooner having proper lookout with tow where initial fault that of tug. [98 Fed. 138] 38: 675

**Contributory and concurrent negligence, fault of tow.**

- Two tugs approaching schooner at full speed to tow into harbor. [63 Fed. 856; 24 U. S. App. 280] 11: 454
- Burden on tug at fault to show contributory negligence. [50 Fed. 129; 8 U. S. App. 9] 1: 489
- Privileged steamer guilty of contributory fault in failing to observe that tug had a tow. [84 Fed. 508; 55 U. S. App. 274] 28: 476
- Failure to give signals required by inspector's rules, tug and steamboat both at fault. [61 Fed. 364; 20 U. S. App. 570] 9: 521
- Concurring negligence of tug and other vessel, parties. [58 Fed. 251; 14 U. S. App. 684] 7: 216
- Joint liability of tugs for concurrent negligence. [52 Fed. 890; 1 U. S. App. 658] 3: 342
- Original fault of other vessel, subsequent fault of tug and tow. Id.
- Tow colliding with anchored schooner safely passed by tug. [92 Fed. 525; 63 U. S. App. 298] 34: 516
- Liability of tow whose improper manning contributed to fault of her tug. [78 Fed. 824; 47 U. S. App. 368] 24: 353
- Contributory fault in failing to observe that other tug would be unable to check her tows and pass behind. [79 Fed. 117; 45 U. S. App. 631] 24: 464
- Participation by tows in fault of tug in navigating forbidden part of river. [50 Fed. 134; 1 U. S. App. 129] 1: 494
- Tow participating in fault of tug. [52 Fed. 890; 1 U. S. App. 658] 3: 342
- Tow failing to follow course of tug. [53 Fed. 155; 3 U. S. App. 320] 3: 481
- [59 Fed. 194; 17 U. S. App. 289] 8: 87

## COLLISION—continued.

## VII. VESSELS AT REST, AT ANCHOR, OR AT PIER.

- Express notice not required before pulling steamer across dock to opposite pier.  
[92 Fed. 1021] 35: 164
- Failure to have spare lines sufficient to resist steamer's impact.  
[94 Fed. 495] 37: 154
- Tow held by tug against tide. [51 Fed. 527; 1 U. S. App. 244] 2: 365
- Tug alongside steamship, contributory negligence.  
[54 Fed. 181; 14 U. S. App. 39] 4: 268
- Sufficiency of precautions to prevent vessel from breaking moorings.  
[100 Fed. 332] 40: 386
- Failure to fasten vessel properly, vessel breaking loose and injuring other vessels.  
[85 Fed. 402; 55 U. S. App. 413] 29: 268
- Liability of owner when vessel maliciously cast adrift by stranger. Id.
- Moored ship going adrift by breaking of spile during heavy gale.  
[65 Fed. 528; 26 U. S. App. 480] 13: 34
- Collision between tow and vessel anchored outside prescribed boundaries.  
[63 Fed. 1020; 26 U. S. App. 183] 12: 1
- Vessel not trespasser in entering water within ends of piers above and below ferryboat's slip.  
[67 Fed. 557; 35 U. S. App. 272] 14: 527
- Colliding on anchorage grounds with tow held against tide by tug while getting anchor.  
[73 Fed. 875; 38 U. S. App. 549] 20: 79
- Steamer while landing striking other steamer moored at adjacent wharf.  
[50 Fed. 703; 3 U. S. App. 109] 1: 624
- Relative duty of vessels at rest in close proximity.  
[81 Fed. 231; 53 U. S. App. 309] 26: 373
- Canal boat running into slip too close behind moored steamer.  
[92 Fed. 1021] 35: 164
- Canal boats intruding in slip of steamboat.  
[49 Fed. 764; 1 U. S. App. 109] 1: 431
- Tug manœuvering at entrance of slip of ferryboat.  
[49 Fed. 688; 1 U. S. App. 88] 1: 415
- Steamer colliding with dredge at anchor in broad daylight held solely at fault.  
[76 Fed. 877; 33 U. S. App. 717] 22: 597
- Moving vessel colliding with dredge at anchor, duty to know set of currents. Id.
- Failure of dredge boat to maintain position.  
[55 Fed. 347; 14 U. S. App. 168] 5: 127
- Steamer leaving proper course in river and colliding with sloop at anchor.  
[89 Fed. 957; 61 U. S. App. 207] 32: 452
- Tow striking schooner at anchor during storm after passage of safe anchoring place by tug and tows.  
[100 Fed. 128] 40: 312
- Cause of cut in canal boat's bottom in collision with moored steamer.  
[92 Fed. 1021] 35: 164
- When presumption that moving vessel in fault obtains.  
[81 Fed. 227; 39 U. S. App. 638] 26: 338
- Held on evidence that sinking of wharf boat was due to blow struck by steamer.  
[80 Fed. 943; 39 U. S. App. 594] 26: 270
- Yacht moored on extreme edge of channel of narrow river at dock built without permission.  
[70 Fed. 720; 26 U. S. App. 781] 17: 357
- Absence of proper anchor watch on schooner at anchor, not relieve from liability tug which might have avoided collision by changing course.  
[100 Fed. 128] 40: 312

## VIII. LIGHTS, SIGNALS, AND LOOKOUTS.

**SIGNALS.**

Signals of meeting vessels, see

Note, 30: 630

**COLLISION—continued.**

Use to obtain consent to course otherwise unauthorized not indication of intent to violate rule if assent withheld. [86 Fed. 814; 56 U. S. App. 146] 30: 623

Failure to interchange signals, and slacken speed.

[52 Fed. 885; 8 U. S. App. 138] 3: 330

Failure to give signals required by inspector's rules, both at fault.

[61 Fed. 364; 20 U. S. App. 570] 9: 521

Tug with tow liable for breaking agreement made by signals.

[92 Fed. 931] 35: 91

Vessel aground giving signals and showing lights indicating that she will keep out of other vessel's way. [78 Fed. 824; 47 U. S. App. 368] 24: 353

Steamer right to rely on sailing vessel keeping course after signals exchanged.

[89 Fed. 757; 50 U. S. App. 435] 32: 331

On nearing curve or bend in channel.

[96 Fed. 253] 37: 462

Failure to keep vessel's head to tide while crossing bows of other vessel after giving signal.

[66 Fed. 366; 35 U. S. App. 75] 13: 515

Failure to give, on passing grounded vessel.

[92 Fed. 678; 63 U. S. App. 162] 34: 616

Failure to give passing signal when other vessel guilty of gross negligence.

[66 Fed. 77; 25 U. S. App. 153] 13: 337

Failure to reverse and give danger signals on receiving answering signal showing own signal misunderstood.

[74 Fed. 316; 33 U. S. App. 443] 20: 214

Failure of steamer descending narrow channel to hear signals of tug with tow.

[87 Fed. 574; 58 U. S. App. 99] 31: 111

Anticipating departure from statute without signal.

[58 Fed. 813; 20 U. S. App. 105] 7: 495

International rules, duty to change course, misleading signal.

[53 Fed. 293; 11 U. S. App. 693] 3: 539

Sheering from course indicated by signals.

[91 Fed. 547; 62 U. S. App. 88] 33: 667

Duty of one vessel where other vessel suddenly sheers from course indicated. *Id.*

**Failure to answer; duty of signaling vessel.**

Excuse for failure to answer signal, mistake as to vessel for which intended.

[78 Fed. 186; 42 U. S. App. 366] 24: 51

Steamer continuing course after failure to get answer to signal.

[89 Fed. 1015; 45 U. S. App. 755] 32: 464

Right of vessel having right of way to continue onward after failure to get answers to her signals.

[78 Fed. 186; 42 U. S. App. 366] 24: 51

Steamboat supposing signal intended for another vessel, signaling vessel proceeding after failure to get answer. *Id.*

Duty of vessel failing to get answer to her signals from approaching vessel.

[78 Fed. 649; 42 U. S. App. 374] 24: 267

**Failure to hear or obey.**

Failure to hear whistles by sail required to keep her course.

[66 Fed. 604; 35 U. S. App. 6] 13: 653

Disabled steamer, failure of sail to heed signals.

[60 Fed. 459; 20 U. S. App. 331] 9: 73

Failure to notice signals indicating change of course to cross.

[59 Fed. 494; 20 U. S. App. 217] 8: 196

Failure of tug to alter course in accordance with whistle.

[55 Fed. 342; 14 U. S. App. 162] 5: 124

Steamship's failure to reverse on changing course from that agreed on by signals with tugs having tow.

[64 Fed. 811; 26 U. S. App. 475] 12: 427

Failure of tug to alter course in accordance with whistle.

[55 Fed. 342; 14 U. S. App. 162] 5: 124

Violation of agreement by passing signals after giving.

[67 Fed. 556; 35 U. S. App. 161] 14: 525

**COLLISION**—continued.

Tug with tow liable for collision resulting from failure to obey agreement by signals. [92 Fed. 931] 35: 91

Movements not in accordance with signals received. [64 Fed. 141; 14 U. S. App. 710] 13: 680

Steamer failing to starboard helm in accordance with own signal. [89 Fed. 592; 60 U. S. App. 417] 32: 274

**Lights.**

Not required on vessel moored to wharf at side of river channel 200 feet wide. [70 Fed. 797; 25 U. S. App. 586] 17: 419

Failure of overtaking vessel to give. [73 Fed. 883; 43 U. S. App. 190] 20: 86

Collision with unlighted schooner at anchor not projecting beyond corner of wharf. [70 Fed. 797; 25 U. S. App. 586] 17: 419

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Insufficient green light on schooner, steamer mistaking her for pilot boat. [60 Fed. 299; 20 U. S. App. 365] 8: 624

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Coal barge in bayou; necessary lights. Id.

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Collision at night between steamship and schooner held not to have been due to lack of lights on schooner. [81 Fed. 415; 55 U. S. App. 1] 26: 467

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Insufficient and misleading lights, collision between schooners. [55 Fed. 685; 5 U. S. App. 370] 5: 246

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**Lookout.**

Want of proper lookout entitled to great weight in determining liability. [98 Fed. 138] 38: 675

Failure to have lookout in bow when proper lookout could not be kept from lookout bridge. [63 Fed. 280; 25 U. S. App. 1] 11: 187

Sail may assume that proper lookout is kept on steam. [49 Fed. 167; 1 U. S. App. 11] 1: 219

Absence of, on steamer, collision with tug. [55 Fed. 1021; 14 U. S. App. 346] 5: 390

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Failure to have, as excusing other vessel's violation of navigation rules. [63 Fed. 476; 26 U. S. App. 152] 11: 519

Absence of anchor watch on schooner at anchor, not relieve from liability tug which might have avoided collision by changing course. [100 Fed. 128] 40: 312

Duty as to, of tug attempting to tow schooner into channel from behind pier. [87 Fed. 574; 58 U. S. App. 99] 31: 111

Absence of lookout immaterial when approaching vessel seasonably seen. [92 Fed. 1021] 35: 167

## COLLISION—continued.

- Absence of lookout on steamer, collision with tug.  
[55 Fed. 1021; 14 U. S. App. 346] 5: 390
- Vessel keeping too near end of piers and failing to keep lookout in New York harbor.  
[66 Fed. 366; 35 U. S. App. 75] 13: 515
- Failure of tug to keep proper lookout.  
[62 Fed. 617; 17 U. S. App. 642] 10: 552
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[89 Fed. 957; 61 U. S. App. 207] 32: 452
- Absence of, on steamer, contributory negligence, departure from statutory course.  
[55 Fed. 1021; 14 U. S. App. 346] 5: 390
- Watchman outside pilot house not lookout on forecastle.  
[89 Fed. 957; 61 U. S. App. 207] 32: 452
- No other lookout than captain of tug engaged in other duties.  
[74 Fed. 653; 33 U. S. App. 505] 20: 585
- On tug, what is sufficient.  
[62 Fed. 617; 17 U. S. App. 642] 10: 552
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## IX. OVERTAKING VESSELS.

- Excessive speed, failure of overtaking vessel to keep out of way.  
[51 Fed. 949; 2 U. S. App. 396] 2: 564
- Failure of overtaking vessel to keep out of the way, contributing to injury.  
[52 Fed. 233; 2 U. S. App. 390] 3: 56
- Duty to pass at such distance that suction not interfere with other vessel's navigation.  
[91 Fed. 547; 62 U. S. App. 88] 33: 667
- Failing to signal intended course and turning in direction preceding vessel supposed to be taking.  
[73 Fed. 883; 43 U. S. App. 190] 20: 86
- Tug injured by overtaking vessel may take advantage of latter's fault towards steamer to which tug previously fastened. Id.
- Overtaking vessel not obliged to anticipate improper navigation on other vessel's part.  
[67 Fed. 365; 35 U. S. App. 215] 14: 418
- Tug injured by overtaking vessel at fault in not having full complement of men.  
[73 Fed. 883; 43 U. S. App. 190] 20: 86
- Parallel courses, change of course.  
[60 Fed. 461; 20 U. S. App. 554] 9: 75
- Duty to remain at anchor until other vessel has passed.  
[51 Fed. 949; 2 U. S. App. 396] 2: 564
- Forward vessel dropping peak, *in extremis*.  
[54 Fed. 207; 14 U. S. App. 27] 4: 289
- Liability to misstay, following too closely. Id.
- Duty of tug to take sufficient room in passing schooner.  
[49 Fed. 254; 1 U. S. App. 92] 1: 238
- Space allowed between other vessel in passing.  
[67 Fed. 365; 35 U. S. App. 215] 14: 418
- Liability to moored vessel of vessel overtaken while taking customary course.  
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## X. Fog.

- Duty of sailing vessel to hold her course.  
[58 Fed. 427; 14 U. S. App. 655] 7: 285
- Duty to use lead when practicable.  
[61 Fed. 513; 14 U. S. App. 82] 9: 598
- Tug with long tow entering dangerous slew in dense fog.  
[86 Fed. 697; 57 U. S. App. 187] 30: 343
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[86 Fed. 475; 57 U. S. App. 706] 30: 203
- Excuse that other vessel was anchored, dangerous speed.  
[77 Fed. 226; 33 U. S. App. 647] 23: 123

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Ferry boat feeling way down river near or within ends of piers of other ferry-boat slip. [67 Fed. 557; 35 U. S. App. 272] 14: 527

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Steamer with large passenger list proceeding along river to own wharf before anchoring, during. [98 Fed. 131] 38: 668

**Duty to stop and reverse.**

When tug's signal not answered. [62 Fed. 87; 22 U. S. App. 301] 10: 278

After cross signal from other vessel. [62 Fed. 71; 22 U. S. App. 242] 10: 262

When whistle heard half a mile away one point on starboard bow and no subsequent widening of bearing. Id.

Mistaking double for single blast, failure to stop to ascertain other vessel's exact position and course. Id.

Duty of steam vessel hearing whistle of other vessel a few points off either bow. Id.

Finding that steam barge which collided with tow did not reverse promptly. [58 Fed. 927; 20 U. S. App. 127] 7: 572

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What is "moderate speed" in. [63 Fed. 478; 26 U. S. App. 164] 11: 302

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[49 Fed. 959; 1 U. S. App. 78] 1: 486

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When speed of schooner excessive, five or six knots. [74 Fed. 899; 33 U. S. App. 510] 21: 162

Excessive speed of steamer, what is. [84 Fed. 902; 55 U. S. App. 445] 28: 528

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[58 Fed. 427; 14 U. S. App. 655] 7: 285

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[53 Fed. 288; 1 U. S. App. 614] 3: 534

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[54 Fed. 542; 8 U. S. App. 312] 4: 501

**Fog signals.**

Duty of moored vessel to give fog signals.

[61 Fed. 513; 14 U. S. App. 82] 9: 598

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[55 Fed. 426; 5 U. S. App. 314] 5: 171

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[60 Fed. 637; 20 U. S. App. 439] 9: 167

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[49 Fed. 169; 1 U. S. App. 26] 1: 221

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[84 Fed. 902; 55 U. S. App. 445] 28: 528

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[68 Fed. 390; 35 U. S. App. 321] 15: 485

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[67 Fed. 557; 35 U. S. App. 272] 14: 527

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## XI. ERRORS IN EXTREMIS.

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[75 Fed. 424; 33 U. S. App. 543] 21: 424

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[54 Fed. 207; 14 U. S. App. 27] 4: 289

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[52 Fed. 396; 8 U. S. App. 104] 3: 161

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[84 Fed. 906; 55 U. S. App. 343] 28: 562

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[84 Fed. 365; 53 U. S. App. 700] 28: 428

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[78 Fed. 824; 47 U. S. App. 368] 24: 353

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[74 Fed. 640; 33 U. S. App. 503] 20: 572

## XIII. EVIDENCE.

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[53 Fed. 293; 11 U. S. App. 693] 3: 539

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Presumption when one vessel clearly in fault.  
[74 Fed. 899; 33 U. S. App. 510] 21: 162

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[76 Fed. 877; 33 U. S. App. 717] 22: 597

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[80 Fed. 998; 42 U. S. App. 431] 26: 301

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[48 Fed. 764; 1 U. S. App. 32] 1: 87

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[63 Fed. 310; 24 U. S. App. 239] 11: 209

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[56 Fed. 696; 13 U. S. App. 354] 6: 86

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[62 Fed. 778; 27 U. S. App. 244] 10: 637
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     [100 Fed. 17] 40: 585  
 Letter from one of two owners accepting offer of purchase not binding.  
     [100 Fed. 224] 10: 341  
 Acceptance of option for purchase of land must be unconditional. Id.  
 Correspondence, letter of acceptance inclosing forms.  
     [80 Fed. 337; 42 U. S. App. 483] 25: 453  
 By insurance agents, to send tug out for insured scows reported to be adrift.  
     [67 Fed. 341; 35 U. S. App. 100] 14: 408  
 Submitting to jury question whether contract completed, where written negotiations supplemented by oral testimony.  
     [94 Fed. 754] 36: 470  
 Uncompleted negotiations for extension of mortgage to intending purchaser.  
     [72 Fed. 755; 44 U. S. App. 364] 19: 172

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- Negotiations for agreement not completed contract by telegrams.  
[73 Fed. 619; 43 U. S. App. 160] 19: 611
- Admissibility of letter to show knowledge of nonacceptance of option.  
[66 Fed. 467; 30 U. S. App. 244] 14: 253
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**Implied.**

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- By bank whose debts assumed, to repay bank assuming, amount in excess of value of property transferred.  
[97 Fed. 282] 38: 179
- To pay insurance agent for services as general manager in addition to commissions.  
[97 Fed. 913] 38: 553
- As to right of cargo of salving vessel to share in salvage.  
[60 Fed. 921; 13 U. S. App. 662] 9: 292
- Property bequeathed to sons in confidence that they will provide for daughters.  
[53 Fed. 872; 10 U. S. App. 574] 4: 73
- For repayment of money received for unconstitutional issue of bonds.  
[52 Fed. 350; 10 U. S. App. 333] 3: 109
- On failure to perform condition of subscription; benefits received.  
[51 Fed. 733; 6 U. S. App. 115; 19 L. R. A. 796] 2: 480
- Liability of one who induces another to do work on promise that third person will pay.  
[72 Fed. 336; 36 U. S. App. 499] 19: 139

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- Acceptance of option for purchase of property must be unconditional.  
[100 Fed. 224] 40: 341
- Rights under, after expiration of time for which given.  
[68 Fed. 830; 25 U. S. App. 280] 16: 8
- To lease corporate stock, acceptance of, by voting.  
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[90 Fed. 451; 61 U. S. App. 446] 33: 595
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[100 Fed. 224] 40: 341

**To whom available; rights of third persons; who bound.**

- Action on, by third person.  
[65 Fed. 298; 31 U. S. App. 1] 12: 636
- Mortgagee's contract not to put new mortgage, inuring to subsequent purchaser's benefit.  
[71 Fed. 560; 37 U. S. App. 626] 18: 242
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[72 Fed. 758; 44 U. S. App. 376] 19: 176
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[53 Fed. 977; 10 U. S. App. 616] 4: 130
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- For Necessity of Writing, see **FRAUDS, STATUTE OF**.
- Contracts of Incompetent Persons, see **INCOMPETENT PERSONS**.
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- Partially void or illegal contracts, see Note, 30: 473
- Separation agreement by which husband provides for wife's separate maintenance.  
[97 Fed. 367] 38: 592
- Provision in separation agreement that agreement as to property rights not affected by subsequently living together.  
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- Presumption as to validity of contracts between parties in confidential relations. Id.  
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- Necessity that all essential points be mutually and finally assented to. [98 Fed. 781] 39: 284  
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- Sunday laws as affecting, Federal court following decision of state court as to. [85 Fed. 268; 56 U. S. App. 403] 29: 549  
 Validity of mortgage made on Sunday. Id.  
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**—Public policy, generally.**

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- Validity of contract as affected by, see Notes, 9: 666, 34: 486

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Determined by Constitution, laws, and judicial decisions.

[61 Fed. 606; 23 U. S. App. 220; 24 L. R. A. 693] 7: 15

To restrict right to contract, it must clearly appear that contract is against. *Id.*

Purpose of the parties and not actual injury to the public the test.

[83 Fed. 372; 48 U. S. App. 596; 45 L. R. A. 410] 28: 178

Party seeking to put restraint on freedom of contract must show that contract in question is against public policy.

[70 Fed. 201; 36 U. S. App. 152; 30 L. R. A. 193] 17: 62

Provision that Columbian Exposition Company not liable for losses however originating.

[96 Fed. 687] 38: 483

Stipulation that fraudulent representations shall not affect validity.

[67 Fed. 440; 32 U. S. App. 200] 14: 459

Stipulation in insurance policy requiring suit to be brought only in circuit court.

[82 Fed. 508; 54 U. S. App. 290] 27: 212

That any improvements made by employee in machines should belong to employer.

[65 Fed. 864; 25 U. S. App. 239] 13: 180

Purchase of beer to be sold in place where sale subsequently prohibited.

[66 Fed. 653; 32 U. S. App. 38] 13: 665

To pay agent assisting in procuring appropriation for a reservation.

[66 Fed. 677; 30 U. S. App. 40] 14: 50

To compensate agents or attorneys for influencing public officials.

[85 Fed. 4; 54 U. S. App. 639] 29: 438

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Unlawful combination to stifle competition for public work, validity of subsequent agreement to share profits and losses.

[83 Fed. 372; 48 U. S. App. 596; 45 L. R. A. 410] 28: 178

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[83 Fed. 372; 48 U. S. App. 596; 45 L. R. A. 410] 28: 178

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[80 Fed. 839; 42 U. S. App. 522] 26: 175

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[53 Fed. 19; 3 U. S. App. 264] 3: 399

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[61 Fed. 993; 27 U. S. App. 1] 9: 659

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[70 Fed. 201; 36 U. S. App. 152; 30 L. R. A. 193] 17: 62

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[93 Fed. 543] 35: 423

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[76 Fed. 439; 40 U. S. App. 448] 22: 264

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[66 Fed. 240; 33 U. S. App. 1] 13: 426

—Restraint of trade.

See also MONOPOLIES.

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[58 Fed. 58; 19 U. S. App. 36] 7: 15

When and to what extent permissible at common law.

[85 Fed. 271; 54 U. S. App. 723; 46 L. R. A. 122] 29: 141

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[83 Fed. 779; 54 U. S. App. 439] 28: 80

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*Id.*

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[83 Fed. 619; 54 U. S. App. 416] 27: 634



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[83 Fed. 372; 48 U. S. App. 596; 45 L. R. A. 410] 28: 178

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[86 Fed. 439; 58 U. S. App. 388] 30: 174

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[77 Fed. 288; 47 U. S. App. 146; 35 L. R. A. 728] 25: 267

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[100 Fed. 373] 40: 416

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[86 Fed. 585; 58 U. S. App. 444] 30: 293

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[61 Fed. 993; 27 U. S. App. 1] 9: 659

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[83 Fed. 372; 48 U. S. App. 596; 45 L. R. A. 410] 28: 178

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[72 Fed. 366; 34 U. S. App. 598] 18: 595

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- Admissibility of parol evidence to negative implied agreement from language of written contract. Id.  
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[73 Fed. 994; 36 U. S. App. 634] 20: 244

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- Rescission of executory contracts, see Note, 30: 210
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- For purchase of mining claim on purchaser's suspension of work. [94 Fed. 960] 36: 581
- For fraudulent misrepresentations as to third person's offer to buy. [72 Fed. 387; 36 U. S. App. 448] 18: 606
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- Recovery for work and material under modified contract. Id.
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Flood as excuse for nonperformance. [69 Fed. 773; 32 U. S. App. 520] 16: 400

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Good faith of engineer whose estimate is conclusive. Id.

Estoppel to claim reduction below estimates by engineer. Id.

Architect's determination as condition precedent, when may be dispensed with. [80 Fed. 705; 53 U. S. App. 257] 26: 100

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Agreement to submit all questions to architects, not preclude suit where they refuse to act. [90 Fed. 639; 62 U. S. App. 443] 33: 205

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[74 Fed. 707; 40 U. S. App. 61] 21: 3

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Necessity of clearly showing loss and amount thereof.

[83 Fed. 824; 48 U. S. App. 581] 28: 168

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[63 Fed. 232; 25 U. S. App. 58] 11: 149

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[99 Fed. 222] 39: 476

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[83 Fed. 779; 54 U. S. App. 439] 28: 80

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[94 Fed. 83] 36: 103

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[80 Fed. 655; 49 U. S. App. 295] 26: 70

Repayment to contractor of interest paid by him on bonds given for contract price.

[67 Fed. 84; 31 U. S. App. 387] 14: 314

Contractor's right to recover for extra work rendered necessary by error on part of representative of other party.

[100 Fed. 197] 40: 325

Provision in contract against allowance for, unless agreed to in writing, not prevent recovery for additional work at oral request of other party.

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Right of election between action *ex contractu* and action *ex delicto* for fraud.

[84 Fed. 131; 55 U. S. App. 205] 28: 305

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[61 Fed. 237; 21 U. S. App. 50] 9: 468

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[91 Fed. 232; 63 U. S. App. 536] 33: 475

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[73 Fed. 984; 46 U. S. App. 52] 20: 233

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[62 Fed. 375; 18 U. S. App. 603] 10: 422

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[66 Fed. 240; 33 U. S. App. 1] 13: 426

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[92 Fed. 290] 34: 351

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[85 Fed. 740; 57 U. S. App. 379] 29: 413

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[91 Fed. 345; 62 U. S. App. 520] 33: 550

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[84 Fed. 106; 55 U. S. App. 522] 28: 286

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[85 Fed. 949; 58 U. S. App. 586] 29: 481

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[63 Fed. 925; 27 U. S. App. 403] 11: 503

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[74 Fed. 203; 36 U. S. App. 672; 33 L. R. A. 249] 20: 397

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Author's common-law right to unpublished manuscript not abrogated by copyright statutes. [73 Fed. 196; 38 U. S. App. 410] 19: 429

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Id.

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Price catalogue of articles not subject to artistic treatment.

[82 Fed. 316; 53 U. S. App. 461] 27: 250

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[56 Fed. 483; 1 U. S. App. 573] 4: 10

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[82 Fed. 314; 53 U. S. App. 449] 27: 246

Whether photograph original work of art or mere manual reproduction, question for jury. [77 Fed. 966; 45 U. S. App. 449] 23: 594

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[96 Fed. 213] 37: 453

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**Publication; notice of copyright.**

Publication by publicly exhibiting painting.

[72 Fed. 54; 33 U. S. App. 399] 18: 431

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[54 Fed. 890; 14 U. S. App. 15] 4: 648

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[79 Fed. 756; 51 U. S. App. 216; 35 L. R. A. 400] 25: 648

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Presumption as to unfair use of syllabi beyond that apparent on the face of the work. Id.

Prima facie case of infringement of syllabi by digest paragraphs, sufficiency of rebuttal. Id.

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Opinions of witnesses as to question of infringement of syllabi by digest paragraphs, how far considered by court. Id.

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[61 Fed. 689; 26 U. S. App. 99] 10: 17

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**CORPORATIONS.**

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[60 Fed. 645; 18 U. S. App. 542] 9: 174

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[66 Fed. 224; 23 U. S. App. 549] 13: 410

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[75 Fed. 433; 43 U. S. App. 550] 22: 378

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[70 Fed. 442; 25 U. S. App. 415; 30 L. R. A. 823] 17: 181

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[66 Fed. 224; 23 U. S. App. 549] 13: 410

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[79 Fed. 517; 49 U. S. App. 139] 25: 46

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[84 Fed. 371; 50 U. S. App. 271] 28: 431

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[76 Fed. 38; 46 U. S. App. 164] 22: 52

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[99 Fed. 114] 39: 431

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[80 Fed. 569; 47 U. S. App. 692] 26: 1

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[90 Fed. 348; 62 U. S. App. 141] 33: 95

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- Execution against stockholders of new corporation.  
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- Of Banks, see BANKS.
- Implied power to loan credit to other corporation.  
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- To transfer property and business to another corporation.  
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- Rights of creditors and nonassenting stockholders; waiver. Id.
- To guarantee payment of third person's obligations.  
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- Of land company to give guaranty of bonds and dividends of railway company.  
[62 Fed. 335; 22 U. S. App. 267] 10: 393
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- On *ultra vires* contract, only where benefit received. [94 Fed. 925] 36: 553
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- Strict rules of law not applicable on contracts with person knowing corporation's custom to transact business in irregular manner. [95 Fed. 23] 36: 633
- For participation in fraud by directors or officer in control.  
[80 Fed. 172; 53 U. S. App. 30] 25: 357
- One corporation not liable for debts of other because one officer of former director of latter.  
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- Of corporation holding majority of stock in another corporation to account for profits on lease from latter. [78 Fed. 724; 51 U. S. App. 1] 24: 216
- Of one corporation on contract of other with same stockholders. [68 Fed. 105; 31 U. S. App. 704; 34 L. R. A. 625] 15: 289
- To creditors of other corporation for money paid on own claim, by reason of influence as creditor. [90 Fed. 545; 61 U. S. App. 102] 33: 169
- One corporation not required to give notice of claim against other corporation to latter's creditors. Id.

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- Contract outside of charter powers. [74 Fed. 363; 42 U. S. App. 64] 20: 453
- Corporation's lack of charter authority as defense to other party for breach. Id.
- Contract *ultra vires* in part, when remainder may be enforced. [76 Fed. 271; 40 U. S. App. 257; 34 L. R. A. 518] 22: 171
- Bank's duty to return or account for value of securities received under *ultra vires* contract to reinvest. [97 Fed. 739] 38: 399
- Contract by national bank to pay liabilities of other bank. [97 Fed. 282] 38: 179
- Contract within charter power for one purpose not voidable as made for unauthorized purpose. [97 Fed. 843] 38: 433
- Implied power of corporation authorized to buy and sell lands to contract for printed views of scenery. Id.
- Contract in common name of two corporations identical except in origin of powers; when both bound. [75 Fed. 433; 43 U. S. App. 550] 22: 378
- Adoption of agreement of partnership merged in corporation. [83 Fed. 796; 55 U. S. App. 157] 28: 88
- Referring acts of corporation to such agreement. Id.
- Presumption from acts or contracts of existence of other acts or conditions necessary to make former operative. [97 Fed. 145] 38: 84
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- Sale of property rather than stock, though stock also assigned to purchaser. [87 Fed. 41; 59 U. S. App. 288] 30: 510
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- Contract for sale of entire capital stock; specific performance. [53 Fed. 86; 6 U. S. App. 348] 3: 443
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- Vote of stockholders required to sale of standing timber as sale of interest in land. [90 Fed. 636; 62 U. S. App. 683] 33: 202
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- What constitutes. [52 Fed. 63; 2 U. S. App. 409] 2: 615  
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*Ultra vires* contract not binding on ground of estoppel. [94 Fed. 925] 36: 553  
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- Resolutions granting authority to execute chattel mortgage; construction. [58 Fed. 286; 16 U. S. App. 221; 22 L. R. A. 817] 7: 225  
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When transaction purchase of bonds by corporate agent, instead of payment. [90 Fed. 348; 62 U. S. App. 141] 33: 95

Sufficient consideration when issued in exchange for notes issued for cash received. [93 Fed. 712] 35: 547

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Effect of retaining benefit of bonds so issued. Id.

One taking bonds to secure debt of president and secretary not bona fide purchaser. [71 Fed. 797; 37 U. S. App. 602] 19: 118

Lender of money on security of, a bona fide holder. [65 Fed. 341; 22 U. S. App. 669] 12: 643

Mortgage authorized by irregularly elected directors securing bonds sold without objections from stockholders. [73 Fed. 452; 26 U. S. App. 779; 38 U. S. App. 563] 19: 528

Power to pledge. [54 Fed. 759; 6 U. S. App. 469] 4: 561

Bondholder's right to contest prior lien. [57 Fed. 753; 16 U. S. App. 115] 6: 539

Bondholders of water company; right to treat engine, sold to corporation, as fixture. [53 Fed. 19; 3 U. S. App. 264] 3: 399

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Rights of holders of matured coupons under decree for distribution of proceeds of foreclosure. [79 Fed. 6; 47 U. S. App. 576] 24: 422

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Provisions for majority bondholders binding minority, when enforceable. [74 Fed. 110; 38 U. S. App. 681] 20: 327

Bonds of consolidated corporation; estoppel to question validity of consolidation. [84 Fed. 539; 56 U. S. App. 208] 28: 202

Ratification of unauthorized pledge of bonds. [66 Fed. 234; 30 U. S. App. 68] 13: 420

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Rights of dissenting stockholder of seller as against holders of purchasers' bonds. [54 Fed. 759; 6 U. S. App. 469] 4: 561

Lienor's right to contest bonds. [57 Fed. 753; 16 U. S. App. 115] 6: 539

General creditors' right to contest as unlawful preference. Id.

Effect of fraudulent judgment against corporation upon bondholders. Id.

Liability of one negotiating, for false representations, notwithstanding constructive notice by mortgage securing. [90 Fed. 348; 62 U. S. App. 141] 33: 95

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- Right of bondholders to maintain foreclosure; necessity of making trustee a defendant. [80 Fed. 569; 47 U. S. App. 692] 26: 1
- Necessity of producing before court prior to entry of decree of foreclosure and sale under mortgage. [80 Fed. 450; 53 U. S. App. 270] 25: 549
- Foreclosure for nonpayment of interest; time of default. [56 Fed. 690; 13 U. S. App. 359] 6: 79
- Default as to one bond, effect on other bonds. Id.
- Waiver by accepting interest after default. Id.
- Necessity of previous notice. Id.

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- Power to indorse notes to pay for merchandise bought. [90 Fed. 545; 61 U. S. App. 102] 33: 169
- Implied power to issue notes. [94 Fed. 335] 36: 370
- Implied power to contract indebtedness and give negotiable paper. [81 Fed. 45; 53 U. S. App. 359; 43 L. R. A. 419] 26: 320
- Ultra vires* doctrine not applied to notes and mortgage by president in corporate name. [95 Fed. 23] 36: 633
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- Defense that taking of note by, was *ultra vires*. [63 Fed. 371; 24 U. S. App. 188] 11: 240
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- Delivery of machine to; estoppel of officers to complain of. [52 Fed. 752; 9 U. S. App. 25] 3: 274
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- Directors elected by single stockholder, not his agent. [91 Fed. 295; 63 U. S. App. 359] 33: 517
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- Of Bank Officers, see also **BANKS**.
- Duty of one taking corporate bonds from, to secure private debts. [71 Fed. 797; 37 U. S. App. 602] 19: 118
- Officer's declarations as to authority to use bonds not binding on corporation. Id.
- Parol evidence that other party notified by corporate officer executing, of his lack of authority. [97 Fed. 843] 38: 433
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- Railroad president's power to bind company as to liability under covenant in deed. [70 Fed. 303; 36 U. S. App. 136] 17: 401
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- Power of president of railroad company to contract with himself.  
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[97 Fed. 843] 38: 433
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[86 Fed. 541; 56 U. S. App. 729] 30: 247
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[61 Fed. 804; 18 U. S. App. 692] 10: 83
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[69 Fed. 912; 32 U. S. App. 654] 16: 534
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[72 Fed. 361; 43 U. S. App. 1] 18: 590
- Directors' power to vote president reasonable salary for past services.  
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- Estoppel to question authority of directors irregularly elected.  
[73 Fed. 452; 26 U. S. App. 779; 38 U. S. App. 563] 19: 528
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- Of Bank Officers, see BANKS.
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[62 Fed. 383; 27 U. S. App. 111] 10: 429
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[97 Fed. 896] 38: 131
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[79 Fed. 522; 47 U. S. App. 470] 25: 50
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Changing location of. Id.

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Signers of articles liable until capital stock required is provided. [64 Fed. 90; 24 U. S. App. 308; 26 L. R. A. 470] 12: 56

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To give mortgage; notice to stockholders. [72 Fed. 115; 30 U. S. App. 580] 18: 451

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Promise by, to subscriber for stock, as to amount of assets, without consideration. [96 Fed. 168] 37: 438

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- Stockholder bound by judgment against corporation foreclosing mortgage. [98 Fed. 489] 39: 126
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- Who are "shareholders." [67 Fed. 816; 33 U. S. App. 101] 15: 128
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- What constitutes call. [51 Fed. 381; 4 U. S. App. 438] 2: 286
- Separate causes of actions on separate calls; limitations. [51 Fed. 404; 4 U. S. App. 500] 2: 309
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- Power of comptroller of currency to order successive assessments against stockholder. [97 Fed. 663] 38: 347
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- Liability of subscriber to national bank induced to purchase by fraud. [97 Fed. 865] 38: 510
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- When cause of action to recover money paid on barred. [93 Fed. 629] 35: 501
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**Subscriptions.**

- When subscription becomes binding contract. [96 Fed. 168] 37: 438
- Executory engagement to purchase stock. [58 Fed. 203] 31: 458
- Estoppel to deny liability on subscription to unlawful increase. [66 Fed. 633; 32 U. S. App. 97] 13: 661
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Defenses; compromise with other stockholders.

[57 Fed. 956; 8 U. S. App. 419] 5: 353

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Stockholders' liability on unpaid subscription, see Notes, 23: 322; 33: 28

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Purchaser's right to rescind for fraud after corporation ceases business.

[74 Fed. 135; 40 U. S. App. 1; 33 L. R. A. 727] 20: 339

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[89 Fed. 783; 61 U. S. App. 596] 32: 337

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[74 Fed. 135; 40 U. S. App. 1; 33 L. R. A. 727] 20: 339

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Rescission of subscription contract for fraud, though less than par paid for stock. [89 Fed. 783; 61 U. S. App. 596] 32: 337

Valid subscription for increased stock, not affected by subsequent limitation of amount of increase. [93 Fed. 326] 35: 323

When limitation begins to run against.

[51 Fed. 405; 4 U. S. App. 509] 2: 311

Limitation of action for unpaid subscription to stock. Id.

Action on written subscription, no recovery on different subscription.

[51 Fed. 409; 4 U. S. App. 524] 2: 314

Identifying stockholders, *idem sonans*. Id.

Best evidence of subscription to stock. Id.

Proving subscription, change of corporate name.

[51 Fed. 400; 4 U. S. App. 478] 2: 305

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**Increase of stock.**

Act permitting increase by action of stockholders, not repealed.

[79 Fed. 10; 47 U. S. App. 605; 38 L. R. A. 616] 24: 425

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[66 Fed. 633; 32 U. S. App. 97] 13: 661

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[79 Fed. 10; 47 U. S. App. 605; 38 L. R. A. 616] 24: 425

Presumption as to payment of a tax which is condition precedent to increase of capital stock. Id.

Estoppel, by accepting stock and taking office, to question validity of increase because of nonpayment of tax. Id.

Resolution of shareholders for, binding on subscribers. [93 Fed. 326] 35: 323

Valid subscription to increased stock, not affected by subsequent limitation of amount of increase. Id.

When subscriber to increased stock not entitled to credit for patent transferred in part payment. [79 Fed. 10; 47 U. S. App. 605; 38 L. R. A. 616] 24: 425

Liability of subscriber to increase of stock on original stock issued and retained without objection. [99 Fed. 801] 40: 93

Liability to pay for stock issued without authority.

[66 Fed. 633; 32 U. S. App. 97] 13: 661

Effect of decision that no increase until whole amount paid in.

[89 Fed. 843; 60 U. S. App. 720] 33: 1

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[70 Fed. 424; 25 U. S. App. 434] 17: 170

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[93 Fed. 603] 35: 476

Permitting stock to stand on books in name of another, attachment.

[83 Fed. 769; 51 U. S. App. 663] 28: 199

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[93 Fed. 603] 35: 476

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[68 Fed. 76; 37 U. S. App. 86] 15: 264

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[93 Fed. 603] 35: 476

Complete equitable title passes by unconditional assignment.

[87 Fed. 51; 57 U. S. App. 730] 30: 520

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[69 Fed. 63; 30 U. S. App. 402] 16: 128

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[55 Fed. 366; 13 U. S. App. 57] 5: 134

Proper, but not necessary, parties to suit for transfer of stock.

[66 Fed. 655; 31 U. S. App. 325] 13: 668

**Stock issued for property.**

Issuance of, in exchange for property; valuation.

[85 Fed. 345; 54 U. S. App. 568] 29: 185

Exchange of stock and bonds for property; rule for valuing property.

[54 Fed. 569; 13 U. S. App. 1] 4: 511

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[63 Fed. 749; 24 U. S. App. 133] 11: 401

Title to stock issued for property turned over to corporation.

Id.

Overvaluation of plants received in payment of, evidence of.

[80 Fed. 450; 53 U. S. App. 270] 25: 549

Issued for good will of business; estoppel to claim that good will was overvalued.

[81 Fed. 17; 51 U. S. App. 380] 26: 312

Issued in exchange for valid stock of reorganized company.

[92 Fed. 428] 34: 431

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[81 Fed. 17; 51 U. S. App. 380] 26: 312

Issued for good will of business; determining whether value of good will has depreciated.

Id.

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[94 Fed. 717] 36: 438

Stock of railroad company issued for other than money, labor, or property received, utterly void.

[99 Fed. 114] 39: 431

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Id.

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[95 Fed. 497] 36: 155

Mode of transferring stock as affecting right to libel for transferee's debts.

[63 Fed. 808; 27 U. S. App. 486] 11: 484

Purchaser of stock, transfer being entered on stock-certificate book, "a member" subject to lien for debts.

Id.

Priority of lien of corporation over pledgee's lien under law of foreign company's domicile recognized by courts of United States.

[99 Fed. 187] 39: 452

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[68 Fed. 76; 37 U. S. App. 86] 15: 264

**Holding stock of other corporation.**

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[71 Fed. 369; 34 U. S. App. 423] 18: 78

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- Assessment on bank purchasing stock of other bank as investment.  
[98 Fed. 271] 39: 76
- Insurance company liable on national bank stock purchased with capital.  
[71 Fed. 372; 34 U. S. App. 428] 18: 81
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- Rescission of agreement to restrict itself to holding stock of other corporation.  
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[62 Fed. 49, 697; 91 U. S. App. 299, 321] 33: 517

**Stockholders' rights—In general.**

See also *supra*, **Subscriptions; Stock issued for property.**

- Right to contract with corporation.  
[62 Fed. 49, 697; 91 U. S. App. 299, 321] 33: 517
- Authority of principal stockholder, as agent.  
[57 Fed. 753; 16 U. S. App. 115] 6: 539
- Rescission by, of purchase of lot from corporation.  
[53 Fed. 883; 10 U. S. App. 601] 4: 89
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[76 Fed. 678; 40 U. S. App. 567] 22: 477

**—Actions by.**

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- When bill need not show demand on directors to sue.  
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[76 Fed. 662; 46 U. S. App. 242] 22: 465
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[89 Fed. 783; 61 U. S. App. 596] 32: 337
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[77 Fed. 61; 39 U. S. App. 326] 23: 71
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[81 Fed. 10; 51 U. S. App. 374] 26: 306
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[59 Fed. 992; 20 U. S. App. 407] 8: 440
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[97 Fed. 176] 38: 103
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[78 Fed. 7; 49 U. S. App. 1] 23: 609
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[81 Fed. 14; 41 U. S. App. 691] 26: 309
- Necessity of making corporation defendant. Id.
- Bill complaining of fraud and mismanagement held to state a cause for relief in equity.  
[81 Fed. 10; 51 U. S. App. 374] 26: 306
- To enforce contract to purchase entire corporate stock, equitable jurisdiction.  
[92 Fed. 422] 34: 428
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[87 Fed. 612; 59 U. S. App. 120] 31: 139
- To maintain suit to set aside judgment against corporation; when judgment conclusive.  
[85 Fed. 508; 55 U. S. App. 715] 29: 303
- Bill by, to set aside judgment against corporation, advice of counsel to corporation. Id.
- Minority stockholders' right to enjoin advantageous extension of railroad by majority.  
[68 Fed. 972; 29 U. S. App. 731] 16: 74
- For diversion of funds; bill not to be treated as in complainant's own right.  
[81 Fed. 10; 51 U. S. App. 374] 26: 306
- For diversion of funds, laches. [59 Fed. 321; 16 U. S. App. 608] 8: 137

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Federal jurisdiction to enforce stockholder's liabilities under state statute.

[74 Fed. 29; 33 U. S. App. 460] 20: 280

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[59 Fed. 992; 20 U. S. App. 407] 8: 440

[59 Fed. 321; 16 U. S. App. 608] 8: 137

Suit to recover lands of corporation by holder of legal title to stock.

[66 Fed. 224; 23 U. S. App. 549] 13: 410

## —Dividends.

Guaranty of liability of bank directors for improperly declaring.

[62 Fed. 335; 22 U. S. App. 267] 10: 393

Duty toward preferred stockholders to declare.

[86 Fed. 505; 58 U. S. App. 648] 30: 223

[87 Fed. 612; 59 U. S. App. 120] 31: 139

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[96 Fed. 279] 37: 479

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[71 Fed. 60; 36 U. S. App. 361] 17: 592

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Stockholders' liability to creditors in equity, see

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[71 Fed. 369; 34 U. S. App. 423] 18: 73

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[71 Fed. 372; 34 U. S. App. 428] 18: 81

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[75 Fed. 554; 43 U. S. App. 452] 23: 302

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Id.

Rights of, not arising from subscription; effect of judgment against corporation.

[76 Fed. 166; 46 U. S. App. 281; 36 L. R. A. 139] 22: 110

Attacking judgment against corporation because of voluntary appearance.

[83 Fed. 288; 51 U. S. App. 536] 28: 404

Stockholder in other state not bound, on question of personal liability, by judgment against receiver.

[95 Fed. 747] 37: 240

Right to set up fraud in procuring judgment against corporation.

[90 Fed. 464; 62 U. S. App. 413] 33: 609

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[97 Fed. 865] 38: 510

Right to plead bona fide indebtedness from corporation as defense.

[97 Fed. 297] 38: 193

Subscribers to increase of bank stock liable notwithstanding reduction in amount of increase after bank insolvent.

[99 Fed. 801] 40: 93

Subscribers for increase of stock retaining for three years without objection original stock issued.

Id.

Waiver by United States of stockholder's liability in Pacific railroads.

[70 Fed. 346; 44 U. S. App. 68] 17: 143

## —Effect of transfer.

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[76 Fed. 947; 45 U. S. App. 207] 22: 636

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[79 Fed. 906; 51 U. S. App. 204] 25: 227

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Id.

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[88 Fed. 207; 59 U. S. App. 555] 31: 477

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- Action for damages for conspiracy to disbar attorney from practising in state courts. [63 Fed. 308; 27 U. S. App. 325] 11: 207
- Bill for infringement of patent not defeated by plea of license. [65 Fed. 215; 24 U. S. App. 542] 12: 578
- Action for infringing registered trademark. [71 Fed. 161; 35 U. S. App. 837] 17: 573

**As dependent on citizenship—In general.**

- Citizenship for purposes of Federal jurisdiction, see Note, 6: 174
- Diverse citizenship as a ground of Federal jurisdiction, see Notes, 10: 249; 27: 298
- Jurisdiction conferred by citizenship, not residence. [63 Fed. 873; 25 U. S. App. 99] 11: 476
- Diverse citizenship must exist and appear of record in suit for infringement of trademark. [90 Fed. 5; 62 U. S. App. 240] 32: 496
- Diverse, considering plaintiff a defendant. [53 Fed. 86; 6 U. S. App. 348] 3: 443
- Formal parties, effect of joining. [53 Fed. 19; 3 U. S. App. 264] 3: 399
- Diverse, of complainant and one defendant, when other defendant whose interests are identical with complainant's has same domicile as codefendant. [61 Fed. 705; 22 U. S. App. 359] 10: 20
- Trustees in deed securing corporate bonds not necessary parties in suit by corporation, for accounting against holders. [99 Fed. 114] 39: 431
- No jurisdiction where indispensable parties defendants citizens of same state as complainant. [90 Fed. 142; 61 U. S. App. 636] 32: 542
- Jurisdiction not defeated because bill shows that cocitizens of complainant might have been made defendants. [95 Fed. 850] 37: 396
- Suit by residents of other districts against several defendants, only one residing in district. [74 Fed. 321; 42 U. S. App. 55] 20: 428
- Suit by citizen of Indian territory against citizen of state. [66 Fed. 371; 30 U. S. App. 8] 13: 518  
[68 Fed. 129; 30 U. S. App. 8] 15: 631
- Suit between citizen adopted as member of Indian tribe and another member. [83 Fed. 721; 55 U. S. App. 89] 28: 38
- Effect of subsequent unauthorized naturalization of Indians. Id.
- In foreclosure suits, see Note, 24: 525
- Citizenship of trustee or beneficiary. [54 Fed. 23; 6 U. S. App. 510] 4: 162
- With which side mortgage trustee made defendant to foreclosure by bondholders to be ranged. [80 Fed. 569; 47 U. S. App. 692] 26: 1
- Interests of trustee and beneficiary in trust deed by corporation not adverse to corporation in suit to foreclose. [69 Fed. 2; 30 U. S. App. 762] 16: 107

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- Trustee and debtor residence same state, foreclosure suit by beneficiary.  
[62 Fed. 4; 22 U. S. App. 380] 10: 247
- Suit to set aside deed of trust for creditors, trustee indispensable.  
[58 Fed. 611; 19 U. S. App. 237] 7: 389
- Petition asserting mortgage lien of bonds involved in foreclosure suit.  
[78 Fed. 225; 41 U. S. App. 603] 24: 73
- Defendants interested in property sought to be foreclosed citizens of same state as complainants.  
[67 Fed. 625; 31 U. S. App. 665] 14: 577
- Suit by remaindermen against trustee and grantee of life tenant.  
[83 Fed. 19; 54 U. S. App. 316] 27: 428
- Next friend of infant not a party, and his citizenship not a test of jurisdiction.  
[81 Fed. 320; 55 U. S. App. 8] 26: 427
- Suit by testamentary trustee or special guardian to sell infant's land, against citizen of another state.  
[78 Fed. 399; 45 U. S. App. 409] 24: 145
- Citizenship of receiver of corporation material only where jurisdiction depends on diverse citizenship.  
[87 Fed. 964; 59 U. S. App. 427] 31: 328
- Railroad receiver not necessary or proper party to suit to enforce subscription for stock.  
[74 Fed. 16; 43 U. S. App. 252] 20: 267
- Immaterial in case of bill to enjoin prosecution of creditors' suit pending in same court.  
[81 Fed. 902; 53 U. S. App. 399] 26: 673
- Law as to jurisdiction not affected by act authorizing substituted service on absent defendant.  
[67 Fed. 625; 31 U. S. App. 665] 14: 577
- Remedy at law, existing only in state court, not deprive Federal court of equity of jurisdiction.  
[98 Fed. 761] 39: 264
- Habeas corpus by citizen of one state for release from restraint by citizen of another.  
[64 Fed. 331; 21 U. S. App. 481; 26 L. R. A. 784] 12: 145
- Indictment for murder in Chickasaw nation, when accused's citizenship immaterial.  
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- Burden of negating diverse citizenship by allegation and proof.  
[83 Fed. 225; 49 U. S. App. 681] 28: 399
- Sufficiency of evidence to establish alienage.  
[55 Fed. 240; 14 U. S. App. 173] 5: 91
- Testimony as to citizenship admissible only to support proper allegations.  
[93 Fed. 158] 35: 250
- Estoppel by pleadings to show true citizenship.  
[55 Fed. 885; 12 U. S. App. 242] 5: 293
- When citizenship lost by leaving state.  
[88 Fed. 226; 60 U. S. App. 104] 31: 499
- Effect on citizenship of residing in city of Washington to attend to business.  
[91 Fed. 177; 62 U. S. App. 594] 33: 439
- Leaving state without intention to permanently change domicile.  
[84 Fed. 772; 52 U. S. App. 442] 28: 207
- Changes of citizenship after suit commenced not affect jurisdiction.  
[86 Fed. 818; 58 U. S. App. 320] 30: 415

## —Allegations as to citizenship.

- Averments of citizenship, see Notes, 10: 261; 27: 303
- Of diverse residence, not equivalent to diverse citizenship.  
[53 Fed. 682; 2 U. S. App. 584] 3: 612  
[57 Fed. 378; 13 U. S. App. 547] 6: 403
- Allegation as to residence or place of business, instead of as to citizenship.  
[67 Fed. 625; 31 U. S. App. 665] 14: 577
- Allegations that defendants "inhabitants" of state, not sufficient allegations of citizenship.  
[90 Fed. 5; 62 U. S. App. 240] 32: 496
- That defendant corporation a "citizen" of a specified state.  
[71 Fed. 477; 34 U. S. App. 414] 18: 207
- That citizenship of parties unknown. [67 Fed. 625; 31 U. S. App. 665] 14: 577

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- Sufficiency of averment to show that plaintiff an alien.  
[79 Fed. 676; 47 U. S. App. 290] 25: 45
- Alleging diverse citizenship at time of filing præcipe.  
[71 Fed. 477; 34 U. S. App. 414] 18: 207
- Of corporation, sufficiency.  
[56 Fed. 437; 12 U. S. App. 295] 5: 538  
[56 Fed. 188; 5 U. S. App. 443] 5: 461  
[60 Fed. 503; 13 U. S. App. 681] 9: 110  
[60 Fed. 514; 13 U. S. App. 700] 9: 121
- Of railroad corporation, argumentative.  
[56 Fed. 951; 12 U. S. App. 503] 6: 172
- Pleading describing defendant as specified company of Canada, and alleging that it is a corporation.  
[66 Fed. 922; 21 U. S. App. 682] 14: 190
- That defendant an association of persons duly incorporated under laws of specified state.  
[73 Fed. 519; 43 U. S. App. 181] 19: 551
- That complainant corporation organized under act of Congress.  
[89 Fed. 769; 61 U. S. App. 13] 32: 470
- Attacking jurisdiction in creditors' suit for failure of necessary allegations as to citizenship.  
[91 Fed. 574; 63 U. S. App. 455] 34: 15
- Duty to dismiss where complaint shows nonexistence of requisite diverse citizenship.  
[66 Fed. 371; 30 U. S. App. 8] 13: 518  
[68 Fed. 729; 30 U. S. App. 8] 15: 631
- Averments of, not put in issue by general denial.  
[83 Fed. 225; 49 U. S. App. 681] 28: 399
- Confessed by answer putting in issue residence only.  
[71 Fed. 99; 36 U. S. App. 271] 17: 623
- Insufficiency, objection for first time on appeal, amendment.  
[56 Fed. 951; 12 U. S. App. 503] 6: 172
- Amendment on appeal to show diversity. Id.
- Amending on appeal petition averring residence so as to show citizenship.  
[88 Fed. 814; 58 U. S. App. 171] 32: 124
- Necessary allegations as to citizenship of assignors.  
[74 Fed. 417; 41 U. S. App. 178] 20: 591
- Necessity of averring citizenship of assignor of note.  
[57 Fed. 457; 13 U. S. App. 481] 6: 423
- Granting leave to amend, after reversal, to show jurisdiction.  
[64 Fed. 148; 24 U. S. App. 351] 12: 75
- Amendment need not state that allegations refer to time of filing original pleading.  
[73 Fed. 519; 43 U. S. App. 181] 19: 551
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—**Intervention.**

- When immaterial, as concerns intervention.  
[76 Fed. 252; 40 U. S. App. 341] 22: 152
- Intervening petitions in pending suit for winding up of railroad property.  
[78 Fed. 198; 49 U. S. App. 35] 24: 56
- Jurisdiction not lost by intervention of executrix of a deceased plaintiff.  
[68 Fed. 730; 37 U. S. App. 141] 15: 632

—**Corporations; partnerships.**

- Jurisdiction over corporations and associations, see Notes, 6: 174; 27: 301
- Citizenship of railroad corporation. [61 Fed. 592; 22 U. S. App. 187] 9: 646
- Federal jurisdiction of action by national bank on note where diverse citizenship not shown.  
[64 Fed. 148; 24 U. S. App. 351] 12: 75
- Corporation cannot be sued in Federal court outside of state of incorporation, except by citizen of such state. [70 Fed. 129; 36 U. S. App. 167] 17: 16
- Corporation created in one state, reincorporated in another.  
[75 Fed. 433; 43 U. S. App. 550] 22: 378

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Citizen of one state suing as citizen of another corporation formed by consolidating corporations of each state. [66 Fed. 655; 31 U. S. App. 225] 13: 608  
 Jurisdiction over suit against corporation domiciled in District of Columbia. [94 Fed. 369] 36: 298

Action against state, by corporation created under act of Congress. [87 Fed. 964; 59 U. S. App. 427] 31: 328

Partnership association limited, a corporation for purposes of jurisdiction. [86 Fed. 585; 58 U. S. App. 444] 30: 293

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**—Effect of dismissing party.**

Party not indispensable, dismissal as to, to save jurisdiction. [56 Fed. 549; 15 U. S. App. 55] 6: 10

Dismissal of defendant having joint interest with plaintiff. Id.

Separable controversy, dismissal of defendants to remove obstruction to jurisdiction. [82 Fed. 689; 53 U. S. App. 539] 27: 296

Effect of dismissal of defendants, citizens of complainant state. [83 Fed. 912; 49 U. S. App. 709] 28: 99

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Effect of subsequent introduction of such parties on their own petition. Id.

Effect on jurisdiction of railroad receiver's discharge and sale of road to citizens of plaintiff's state. [86 Fed. 1; 52 U. S. App. 720] 29: 523

Disclaimer by, without dismissal of, defendant having same residence as complainant. [62 Fed. 173; 18 U. S. App. 714] 10: 243

**—Effect of assignment.**

Attachment plaintiff not assignee of forthcoming bond taken by plaintiff. [98 Fed. 793] 39: 294

Citizenship of assignees as affecting Federal jurisdiction, see Notes, 10: 253; 27: 302

Suit by citizen against alien assignor. [98 Fed. 647] 39: 201

Necessary allegations as to citizenship of assignors. [74 Fed. 417; 44 U. S. App. 178] 20: 591

On note, necessity of averment as to assignor's residence. [57 Fed. 457; 13 U. S. App. 481] 6: 423

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Federal jurisdiction of action on county warrants by nonresident assignee. [68 Fed. 177; 32 U. S. App. 367] 15: 353

County warrant payable to one or bearer, citizenship of assignor as affecting. [57 Fed. 1030; 12 U. S. App. 618] 6: 674

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Dismissal of suit where claim transferred to nonresident to enable suit to be brought in Federal court. [97 Fed. 1] 38: 17

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- Simulated transfer of land to alien to confer Federal jurisdiction not shown.  
[93 Fed. 1] 35: 177
- Motive of transfer of cause of action to nonresident as affecting jurisdiction.  
[83 Fed. 534; 54 U. S. App. 450] 27: 585
- Effect of second and colorable transfer of bonds after good-faith transfer,  
creating diversity of citizenship. Id.
- Foreclosure suit by assignee of mortgage, see Note, 24: 526

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- Supplementary and ancillary proceedings and relief, see Notes, 10: 260, 36: 195
- When suit auxiliary. [54 Fed. 269; 12 U. S. App. 11] 4: 320
- Questioning jurisdiction of legal action in equity suit filed to aid same.  
[68 Fed. 263; 31 U. S. App. 486] 22: 60
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[68 Fed. 263; 31 U. S. App. 486] 15: 397
- Diversity of, not essential to ancillary jurisdiction.  
[76 Fed. 624; 43 U. S. App. 490] 22: 430
- Bill bringing in new parties and charging new matters, not ancillary.  
65 Fed. 529; 23 U. S. App. 675] 13: 36
- Bringing in, by compulsory process, party whose citizenship would defeat jurisdiction in principal suit. [68 Fed. 263; 31 U. S. App. 486] 15: 397
- Remitting to court of primary jurisdiction motion relating to transactions within own district. [73 Fed. 568; 43 U. S. App. 224] 19: 569
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[76 Fed. 624; 43 U. S. App. 490] 22: 430
- Jurisdiction of scire facias to enforce liability for costs of indorser of writ.  
[76 Fed. 1005; 33 U. S. App. 628] 21: 598
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[57 Fed. 753; 16 U. S. App. 115] 6: 539
- Auxiliary jurisdiction to foreclose mortgage where in possession of railroad property by receiver. [95 Fed. 497] 36: 155
- Proceeding ancillary to suit to wind up affairs of insolvent corporation.  
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- Jurisdiction of circuit courts as determined by the amount in controversy, see Notes, 19: 75; 36: 459
- Determining value, general rule. [85 Fed. 4; 54 U. S. App. 639] 29: 438
- When law gives no rule; when law gives rule. Id.
- What is, amount demanded, amount recovered.  
[48 Fed. 780; 2 U. S. App. 40] 1: 93
- Effect of amount laid in declaration when law gives no rule.  
[85 Fed. 4; 54 U. S. App. 639] 29: 438
- Amount in dispute determined by amount claimed by plaintiff in good faith, though under mistake of fact. [99 Fed. 593] 39: 665
- Declaration framed for recovery in alternative of amount above and below jurisdiction. [85 Fed. 4; 54 U. S. App. 639] 29: 438
- Demand in plaintiff's declaration in state court as colorable enlargement. Id.
- What is colorable enlargement of demand in declaration when law gives no fixed rule. Id.
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[72 Fed. 867; 36 U. S. App. 519] 19: 206

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- When good faith as to amount demanded shown. [48 Fed. 780; 2 U. S. App. 40] 1: 93
- Effect of overstating amount in declaration. [82 Fed. 295; 53 U. S. App. 408] 27: 133
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- Amending by alleging element of damages bringing within. [95 Fed. 305] 37: 70
- Provision as to, not applicable in case where judgment creditor intervenes in creditor's bill. [90 Fed. 545; 61 U. S. App. 102] 33: 169
- Joinder of debts in one. [59 Fed. 752; 19 U. S. App. 448] 8: 248
- Aggregate of several accounts on which action based. [94 Fed. 739] 36: 455
- Aggregating several notes secured by separate mortgages on different land. [74 Fed. 47; 36 U. S. App. 597] 20: 286
- Joining claims of creditors against stockholders to bring within jurisdiction. [72 Fed. 209; 33 U. S. App. 438] 19: 72
- Value of entire real estate claimed in suit to quiet title. [93 Fed. 1] 35: 177
- Action by several insurers to set aside award. [56 Fed. 378; 15 U. S. App. 134] 5: 524
- Interest on bonds and coupons after maturity not part of matter in dispute. [81 Fed. 241; 52 U. S. App. 250] 26: 381
- In suit to enjoin nuisance. [55 Fed. 443; 3 U. S. App. 592] 5: 183
- In suit to enjoin collection of tax. [70 Fed. 1; 36 U. S. App. 48] 16: 585
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- In suit to restrain shipper from prosecuting multiplicity of freight overcharges. [54 Fed. 547; 13 U. S. App. 99] 4: 503
- Jurisdiction of ancillary suit to stay action to recover lands, regardless of amount. [87 Fed. 498; 59 U. S. App. 82] 31: 87
- Immaterial in ancillary suit to restrain bank receiver from prosecuting action at law in same court. [97 Fed. 663] 38: 347
- In Federal courts in Indian territory. [49 Fed. 347; 4 U. S. App. 121] 1: 286
- Effect of sustaining demurrer to items, reducing amount below jurisdictional limit. [92 Fed. 449] 34: 452
- Effect of reducing below, by attacking one of several accounts on which action based. [94 Fed. 739] 36: 455
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- Jurisdiction as affected by state laws, see Note, 1: 513
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- Rights created by state statutes enforceable in Federal courts, either at law, in equity, or in admiralty. [78 Fed. 7; 49 U. S. App. 1] 23: 609
- Enlarging equitable rights. Id.
- Granting equitable remedy not infringing rights to jury trial. [75 Fed. 742; 43 U. S. App. 770] 23: 498
- Giving remedy by injunction against assessment and collection of taxes on ground of illegality. Id.
- Of proceeding for equitable attachment. [92 Fed. 32; 63 U. S. App. 740] 34: 190
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- Jurisdiction of bill in aid of execution or attachment.  
[75 Fed. 627; 43 U. S. App. 623] 21: 457
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[50 Fed. 790; 2 U. S. App. 227] 1: 676  
[60 Fed. 341; 18 U. S. App. 616] 8: 652
- Statute of state in which tort committed, not opposed to policy of state in which court sitting. [75 Fed. 873; 43 U. S. App. 726; 34 L. R. A. 393] 21: 546
- Jurisdiction of libel to enforce maritime lien.  
[81 Fed. 633; 42 U. S. App. 546] 26: 500
- Creating maritime lien against vessel for supplies.  
[57 Fed. 664; 15 U. S. App. 236] 6: 493
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- As to bill for receivership and sale of property of insolvent corporation by simple contract creditor. [78 Fed. 7; 49 U. S. App. 1] 23: 609
- Federal jurisdiction to enforce stockholders' liability.  
[74 Fed. 20; 33 U. S. App. 460] 20: 280
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[65 Fed. 647; 31 U. S. App. 112] 13: 77
- Of action to quiet title under state statute.  
[58 Fed. 437; 19 U. S. App. 100] 7: 293  
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[58 Fed. 485; 8 U. S. App. 429] 7: 330
- Of partition suit under state statute. [65 Fed. 393; 22 U. S. App. 715] 12: 661
- For partition of land held adversely. [60 Fed. 311; 19 U. S. App. 630] 8: 629
- Execution against stockholders for debt of corporation.  
[54 Fed. 1001; 13 U. S. App. 203] 5: 11
- Levy of execution on Federal court; judgment dissolved under state statute by making assignment for creditors.  
[91 Fed. 617; 63 U. S. App. 525] 34: 31
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- Limiting equity jurisdiction of Federal courts by state legislation.  
[72 Fed. 112; 30 U. S. App. 635] 18: 464  
[74 Fed. 23; 46 U. S. App. 103] 20: 274
- State statute forbidding injunction to restrain collection of illegal tax.  
[88 Fed. 350; 60 U. S. App. 166] 31: 537
- Statutory remedy in state court, not deprive Federal court of suit to enjoin collection of illegal taxes. Id.
- State statute attempting to exclude Federal jurisdiction of action for negligent death, void. [70 Fed. 113; 34 U. S. App. 261; 30 L. R. A. 336] 17: 1
- State act forbidding bankers to sue in national courts.  
[50 Fed. 260; 7 U. S. App. 194] 1: 510
- Claims against counties. [57 Fed. 1030; 12 U. S. App. 618] 6: 674
- Foreclosing as mortgage deed absolute in form, given as security, although state statute provides other remedy. [72 Fed. 112; 30 U. S. App. 635] 18: 464
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- Suit to set aside mortgage made in contemplation of assignment for creditors.  
[54 Fed. 23; 6 U. S. App. 510] 4: 162
- Federal court's power to issue writ of *capias ad satisfaciendum* not affected by state statute. [69 Fed. 987; 34 U. S. App. 177] 16: 575

**Locality of jurisdiction—In general.**

Suing in district of residence, see

Notes, 11: 260; 27: 305

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[53 Fed. 13; 3 U. S. App. 247] 3: 334
- In district where neither party resides.**  
[86 Fed. 439; 58 U. S. App. 388] 30: 174
- When one of the persons affected not within jurisdiction.**  
[57 Fed. 948; 20 U. S. App. 1] 6: 653
- Patent infringement suits.** [82 Fed. 690; 48 U. S. App. 716] 27: 185
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[88 Fed. 258; 59 U. S. App. 592] 31: 525
- Jurisdiction to enforce lien for supplies on vessel sent by receiver into other jurisdiction.**  
[66 Fed. 565; 29 U. S. App. 447] 13: 635
- Necessity of bringing suit to set aside decree for conspiracy and fraud in court which rendered same.**  
[85 Fed. 246; 42 U. S. App. 742] 29: 137
- In garnishment against nonresident defendant upon service on debtor.**  
[72 Fed. 32; 34 U. S. App. 581] 18: 421
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[90 Fed. 142; 61 U. S. App. 636] 32: 542
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[79 Fed. 934; 51 U. S. App. 111] 25: 247
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[93 Fed. 260] 35: 282
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[87 Fed. 252; 58 U. S. App. 83] 30: 632
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[54 Fed. 420; 9 U. S. App. 212] 4: 403
- Suing in one state corporation of another served in latter state.**  
[63 Fed. 333; 25 U. S. App. 70] 11: 232
- Jurisdiction of Federal court in state of stockholder's residence to enforce his liability.**  
[83 Fed. 288; 51 U. S. App. 536] 28: 404
- Federal jurisdiction to enforce stockholder's liability in other state.**  
[66 Fed. 512; 24 U. S. App. 607; 34 L. R. A. 742] 13: 612
- Enforcing stockholder's liability in Federal court in other state.**  
[91 Fed. 443; 63 U. S. App. 20] 33: 564
- Enforcing stockholder's liability in state outside corporation domicile.**  
[95 Fed. 747] 37: 240
- Waiver of right to be such in district of residence.**
- Effect of waiver.** [56 Fed. 76; 5 U. S. App. 423] 5: 421
- Waiver of privilege by appearance.** [56 Fed. 104; 12 U. S. App. 351] 5: 432
- Requirement that suit brought in district where one party resides waived by general appearance.** [93 Fed. 260] 35: 282
- Removal from state to Federal, waiver of privilege to be sued in county of residence.**  
[57 Fed. 10; 13 U. S. App. 222, 231] 6: 231

**V. JURISDICTION OF CIRCUIT COURT OF APPEALS.****Original jurisdiction.**

- Power as to issuing writs of mandamus.**  
[85 Fed. 177; 56 U. S. App. 33] 29: 78
- Mandamus to compel court below to take jurisdiction after its refusal to do so.**  
[63 Fed. 647; 31 U. S. App. 112] 13: 77
- Power to issue mandamus to circuit court to compel dismissal for lack of jurisdiction.**  
[71 Fed. 768; 37 U. S. App. 622] 18: 314



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- Mandamus to circuit court to correct error, when writ of error inadequate.  
[71 Fed. 764; 30 U. S. App. 646] 18: 309
- Mandamus to direct execution of judgment.  
[76 Fed. 400; 33 U. S. App. 673] 22: 244
- Mandamus to judge of court of appeals in Indian territory, to admit defendant to bail pending appeal.  
[85 Fed. 177; 56 U. S. App. 33] 29: 78
- No power to issue writ of certiorari as original process.  
[92 Fed. 690] 34: 620
- Extent of power to issue writs of prohibition.  
[67 Fed. 384; 32 U. S. App. 126] 14: 440
- Application for an original order directing lower court to vacate stay of injunction.  
[83 Fed. 2; 48 U. S. App. 755] 27: 395
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**Appellate jurisdiction—In general.**

- Jurisdiction in general, see Notes, 1: 6; 32: 475
- Distribution of appellate jurisdiction. [53 Fed. 169; 10 U. S. App. 492] 3: 491
- Attempt to confer appellate jurisdiction by voluntary appearance.  
[79 Fed. 129; 49 U. S. App. 114] 24: 466
- Effect of stipulations between parties on power to review.  
[70 Fed. 652; 37 U. S. App. 471] 17: 313
- Appellate jurisdiction of circuit court of appeals restricted to final judgment with certain exceptions.  
[56 Fed. 328; 12 U. S. App. 431] 5: 521
- Only questions presented below considered.  
[97 Fed. 145] 38: 84  
[97 Fed. Rep. 270] 38: 167
- Orders, decrees, and judgments reviewable in circuit court of appeals, see Note, 13: 374
- Effect of suing writ of error out of supreme court on right to review subsequent order.  
[69 Fed. 785; 32 U. S. App. 676] 16: 413
- To review dismissal of action against parties not served.  
[76 Fed. 10; 46 U. S. App. 486] 22: 11
- Of appeal from decree entered upon mandate on former appeal.  
[78 Fed. 208; 41 U. S. App. 645] 24: 63
- Of decisions as to remanding causes to state courts.  
[49 Fed. 481; 5 U. S. App. 6] 1: 326  
[50 Fed. 337; 5 U. S. App. 9] 1: 522
- Of decision sustaining intervenor's claim in foreclosure.  
[48 Fed. 850; 2 U. S. App. 1] 1: 116
- Case involving validity or construction of treaty.  
[53 Fed. 11; 7 U. S. App. 457] 3: 392
- Withholding decision on other questions because supreme court's decision desired on one.  
[84 Fed. 430; 51 U. S. App. 693] 28: 443

**—In cases pending before establishment.**

- Judgment rendered before. [53 Fed. 9; 9 U. S. App. 145] 3: 390
- Decree on bill before, on cross bill after, establishment.  
[49 Fed. 309; 4 U. S. App. 140] 1: 249
- Appeals taken immediately after establishment.  
[50 Fed. 728; 6 U. S. App. 75; 17 L. R. A. 190] 1: 636
- Appeal entered after establishment. [56 Fed. 621; 15 U. S. App. 98] 6: 54
- Judgment entered after establishment and before third Tuesday in June following.  
[49 Fed. 881; 1 U. S. App. 113] 1: 468
- When appeal in admiralty taken to circuit court before July 1, 1891.  
[52 Fed. 876; 8 U. S. App. 111] 33: 25
- Petition for rehearing after decree for injunction and accounting.  
[51 Fed. 305; 5 U. S. App. 94] 2: 172

**COURTS—continued.**

Not with jurisdictional limit of supreme court as to amount.

[49 Fed. 881; 1 U. S. App. 143] 1: 468

Method of review of decree of circuit court after remand by supreme court.

[51 Fed. 929; 5 U. S. App. 97] 2: 542

**—Appeals from territorial courts.**

Appeals from territorial supreme courts.

[53 Fed. 7; 10 U. S. App. 383] 3: 388

[53 Fed. 169; 10 U. S. App. 492] 3: 491

See also Note, 32: 478

Jurisdiction of appeal from Alaska district court.

[70 Fed. 336] 16: 674

[70 Fed. 336] 16: 675

From United States court in Indian territory.

[72 Fed. 289; 36 U. S. App. 547] 18: 565

[72 Fed. 299; 36 U. S. App. 543] 18: 572

**Where jurisdiction of lower court involved.**

When jurisdiction of court below in question.

[47 Fed. 129] 2: 115

[56 Fed. 654; 18 U. S. App. 42] 6: 58

See also Note, 32: 477

No jurisdiction where only question presented is jurisdiction of court below.

[70 Fed. 273; 44 U. S. App. 52] 17: 124

Jurisdiction of supreme court exclusive where only question goes to jurisdiction of trial court.

[65 Fed. 533; 24 U. S. App. 571] 13: 39

Upon dismissal of action for want of jurisdiction.

[60 Fed. 465; 18 U. S. App. 476] 9: 79

No jurisdiction of appeal from decree dismissing libel for want of jurisdiction.

[70 Fed. 273; 44 U. S. App. 52] 17: 124

Bill by trustee in bankruptcy to set aside fraudulent conveyance by bankrupt.

[99 Fed. 539] 39: 647

Of appeal in suit dismissed for want of jurisdiction, where question of jurisdiction not certified.

[93 Fed. 522] 35: 394

Jurisdiction to pass upon jurisdiction of lower court.

[60 Fed. 503; 13 U. S. App. 681] 9: 110

[60 Fed. 514; 13 U. S. App. 700] 9: 121

[62 Fed. 367; 18 U. S. App. 569] 10: 485

Jurisdiction to pass on jurisdiction of court below in habeas corpus case.

[64 Fed. 325; 21 U. S. App. 407] 12: 139

Election between supreme court and circuit court of appeals.

[50 Fed. 260; 7 U. S. App. 194] 1: 510

[53 Fed. 961; 12 U. S. App. 69] 4: 116

Choice between appellate courts when jurisdiction of court below and other questions involved.

[70 Fed. 129; 36 U. S. App. 167] 17: 16

When other questions also involved.

[60 Fed. 979; 23 U. S. App. 143] 9: 300

Considering jurisdiction of court below where other questions involved.

[70 Fed. 129; 36 U. S. App. 167] 17: 16

[74 Fed. 16; 43 U. S. App. 252] 20: 267

Where jurisdiction of court below, and also sufficiency of facts to constitute cause of action involved.

[89 Fed. 769; 61 U. S. App. 13] 32: 470

Cases in which question of jurisdiction may be taken directly to supreme court.

[65 Fed. 647; 31 U. S. App. 112] 13: 77

Appeals to both supreme court and circuit court of appeals.

[49 Fed. 482; 4 U. S. App. 238] 1: 327

In case remanded to state court for lack of jurisdiction.

[90 Fed. 675] 33: 217

No power to determine whether court below erroneously determined that it had jurisdiction.

[93 Fed. 519] 35: 390

Pretermitted decision of lower court's jurisdiction until after final decree in that court.

[86 Fed. 202; 52 U. S. App. 622] 29: 660

**COURTS—continued.**

- Appeal from interlocutory decree granting injunction.  
[78 Fed. 517; 33 U. S. App. 734] 24: 195
- Determining jurisdiction of United States court in Indian territory.  
[54 Fed. 426; 12 U. S. App. 159] 4: 408  
[54 Fed. 432; 12 U. S. App. 169] 4: 414

**—Constitutional questions involved.**

- In general, see Note, 32: 479
- Failure to challenge constitutionality of statute.  
[56 Fed. 654; 18 U. S. App. 42] 6: 58
- Not deprived of jurisdiction by claim, unnecessary to determination, that constitutional question involved. [90 Fed. 136; 61 U. S. App. 487] 32: 536
- When other questions besides constitutional question involved.  
[84 Fed. 942; 56 U. S. App. 53] 28: 579
- Where claim made that state law contravenes Federal Constitution.  
[88 Fed. 435; 60 U. S. App. 100] 31: 570
- Arising only on assumption that statute was passed in violation of state Constitution. [83 Fed. 529; 53 U. S. App. 658] 27: 580
- When construction of Federal Constitution involved.  
[75 Fed. 813; 40 U. S. App. 127] 21: 525
- Whether due force and effect given to judgment of another state. Id.
- Resorting to supreme court and circuit court of appeals on different questions in same case; practice in latter court.  
[76 Fed. 401; 39 U. S. App. 307] 22: 246
- Separate appeals to the Supreme Court and to circuit court of appeals; course of latter court. [83 Fed. 1; 57 U. S. App. 284] 27: 389
- No jurisdiction of question whether business constitutes interstate commerce.  
[60 Fed. 781; 13 U. S. App. 592] 9: 262
- Impairment clause of Federal Constitution; state statute reducing street-railroad fares. [83 Fed. 529; 53 U. S. App. 658] 27: 580
- Question as to impairment of obligation of contracts held to be involved.  
[84 Fed. 942; 56 U. S. App. 53] 28: 579
- Suit to have ordinances granting street-railway franchise annulled as impairing obligation of contract with other party. [98 Fed. 897] 39: 336
- In suit to enjoin tax on railroad property as impairing obligation of contract.  
[93 Fed. 852] 35: 635
- Where only question, whether proposed acts of city authorities would deprive appellant of property without due process.  
[72 Fed. 689; 39 U. S. App. 187] 19: 71
- Decree adjudging state statute fixing railroad rates unconstitutional.  
[68 Fed. 726; 32 U. S. App. 485] 15: 628
- Jurisdiction where other question, as well as constitutionality of state law, involved. [69 Fed. 852; 25 U. S. App. 383] 16: 516
- Case involving constitutionality of state law.  
[53 Fed. 753; 2 U. S. App. 540] 3: 639  
[58 Fed. 433; 19 U. S. App. 233] 7: 290
- Of appeal from denial of writ of habeas corpus where petition based on alleged violation of constitutional rights. [97 Fed. 501] 38: 299

**—Jurisdictional amount.**

- In certain cases where amount in controversy exceeds \$50.  
[93 Fed. 7] 35: 183
- \$5,000 limit not applicable to circuit court of appeals.  
[49 Fed. 881; 1 U. S. App. 113] 1: 468
- Pending case not within jurisdictional limit of supreme court. Id.
- Decree on cross bill rejecting lien for less than \$2,000.  
[49 Fed. 309; 4 U. S. App. 140] 1: 249

## COURTS—continued.

## —In actions against United States.

- Jurisdiction to review judgment in action against United States.  
     [73 Fed. 505; 38 U. S. App. 515] 19: 543  
     See also Note, 32: 479
- Ejectment against United States, submerged lands.  
     [57 Fed. 803; 16 U. S. App. 152] 6: 585
- United States may appeal to, in suits by district court clerk for fees.  
     [64 Fed. 4; 27 U. S. App. 410] 12: 6

## —In injunction cases.

- Appeals from interlocutory decrees, see Notes, 3: 572, 32: 481
- Preliminary injunction.  
     [52 Fed. 10; 5 U. S. App. 151; 17 L. R. A. 615] 2: 596  
     [61 Fed. 782; 18 U. S. App. 458; 24 U. S. App. 81] 10: 60
- Definition of interlocutory order or decree granting injunction.  
     [52 Fed. 10; 5 U. S. App. 151; 17 L. R. A. 615] 2: 596
- When court would have jurisdiction of appeal from final decree.  
     [60 Fed. 781; 13 U. S. App. 592] 9: 26
- Dismissing restraining order and denying injunction.  
     [60 Fed. 469; 8 U. S. App. 541] 9: 84
- Of interlocutory order or decree granting or continuing injunction in patent case.  
     [50 Fed. 785; 2 U. S. App. 188] 1: 668  
     [52 Fed. 10; 5 U. S. App. 151; 17 L. R. A. 615] 2: 596
- Power to review granting or refusal of preliminary injunction, hampering by order not reviewable.  
     [77 Fed. 769; 46 U. S. App. 630] 23: 448
- Jurisdiction of appeal from interlocutory order granting preliminary injunction.  
     [76 Fed. 467; 33 U. S. App. 723] 22: 278
- Appeal from interlocutory decree granting injunction raising only question of lower court's jurisdiction.  
     [78 Fed. 517; 33 U. S. App. 734] 24: 195
- Appeal from interlocutory decrees after hearing on merits, granting injunction.  
     [75 Fed. 118; 36 U. S. App. 321; 40 U. S. App. 136] 21: 257
- Order refusing to dissolve injunction not appealable to.  
     [65 Fed. 642; 31 U. S. App. 83] 13: 73
- Order modifying injunction against infringement of patent appealable to.  
     [72 Fed. 545; 43 U. S. App. 47] 19: 25
- Decrees and judgments in patent cases, see Notes, 3: 572; 32: 484
- Staying intervenor's proceedings and vacating receivership until further order of court.  
     [55 Fed. 131; 2 U. S. App. 606] 5: 53
- Of suit to enjoin collection of state tax on value of patent rights.  
     [80 Fed. 1; 46 U. S. App. 717] 25: 301
- Appellate jurisdiction limited to final judgments and interlocutory orders in injunction.  
     [56 Fed. 328; 12 U. S. App. 431] 5: 521

## —In cases involving customs duties.

- Leave to apply for remissions of duties.  
     [57 Fed. 189; 14 U. S. App. 395] 6: 309
- Directing action of circuit court as to new trial, under customs administrative act.  
     Id.
- Jurisdiction of judgment of circuit court reviewing decision of general appraisers.  
     [49 Fed. 561; 6 U. S. App. 53] 1: 371  
     [51 Fed. 798; 5 U. S. App. 137] 2: 510

## —In bankruptcy cases.

- Of decisions in bankruptcy proceedings.  
     [72 Fed. 10; 33 U. S. App. 416] 18: 409  
     See also Note, 32: 484
- Regardless of amount involved. [91 Fed. 96; 63 U. S. App. 570] 33: 356
- Jurisdiction of appeal by assignee in bankruptcy from disallowance of claim.  
     [55 Fed. 433; 3 U. S. App. 552] 5: 177

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Jurisdiction of refusal to dismiss suit brought by assignee.

[61 Fed. 498; 20 U. S. App. 579] 9: 585

## —In admiralty cases.

In general, see

Note, 32: 483

Of appeal from dismissal of libel, on ground action barred by limitation.

[81 Fed. 876; 48 U. S. App. 430] 26: 665

Of proceeding for limitation of liability.

[87 Fed. 961; 59 U. S. App. 421] 31: 325

Prior to July 1, 1891.

[52 Fed. 876; 8 U. S. App. 111] 3: 325

Decree of circuit court after establishment of circuit court of appeals.

[56 Fed. 621; 15 U. S. App. 98] 6: 54

## —In habeas corpus cases.

Appellate jurisdiction.

[53 Fed. 13; 3 U. S. App. 247] 3: 394

[64 Fed. 325; 21 U. S. App. 407] 12: 139

See also Note, 25: 11

Query as to.

[48 Fed. 75; 4 U. S. App. 1] 1: 48

Writ to be served out of circuit.

Id.

Appeal from final decision of district judge.

[74 Fed. 753; 40 U. S. App. 114] 21: 65

## —In criminal cases.

Conviction of adultery.

[47 Fed. 129] 2: 115

Infamous crime, fraudulent use of mails.

[60 Fed. 597; 23 U. S. App. 289] 9: 152

Error from, to district court, to review judgment on appeal from conviction of Chinaman.

[50 Fed. 271; 7 U. S. App. 183] 1: 516

## VI. CERTIFYING QUESTIONS TO SUPREME COURT.

When questions certified, general rule. [85 Fed. 689; 56 U. S. App. 62] 29: 391  
See also Note, 1: 5

When discretion properly exercised. [49 Fed. 600; 6 U. S. App. 4] 1: 394

When improper. [59 Fed. 500; 11 U. S. App. 616] 8: 199

Application denied because no peculiar conditions.

[74 Fed. 640; 33 U. S. App. 503] 20: 572

Power of circuit court of appeals to certify question.

[50 Fed. 260; 7 U. S. App. 194] 1: 510

[53 Fed. 961; 12 U. S. App. 69] 4: 116

When one judge disqualified and the other two divided.

[57 Fed. 422; 13 U. S. App. 531] 6: 413

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[77 Fed. 774; 46 U. S. App. 619] 23: 454

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[74 Fed. 1; 46 U. S. App. 25] 20: 253

As to jurisdiction of ancillary suit in connection with general creditors' bill.

[66 Fed. 2; 31 U. S. App. 178] 13: 276

Jurisdiction of district court of bill by trustee in bankruptcy against stranger to set aside fraudulent conveyance by bankrupt. [99 Fed. 539] 39: 647

Question as to steamship's liability for injury to baggage by negligent stowage.

[69 Fed. 844; 14 U. S. App. 710] 13: 676

Chinese exclusion, necessity of certificate.

[47 Fed. 641; 7 U. S. App. 1] 1: 1

Statement of facts, fundamental rather than evidential.

[85 Fed. 689; 56 U. S. App. 62] 29: 391

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[49 Fed. 600; 6 U. S. App. 4] 1: 394

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## VII. FOLLOWING STATE PRACTICE AND STATUTES GENERALLY.

**In general.**

- State laws as rules of decision in Federal courts, see  
Notes, 9: 548; 11: 71; 29: 553
- Provision for, not apply in action at law in Federal courts.  
[94 Fed. 502] 37: 372
- Practice and pleadings in Federal courts conforming to those of state courts.  
[63 Fed. 93; 22 U. S. App. 386, 548] 11: 42
- Conformity of practice in common-law action to that of state courts, see  
Notes, 5: 594; 27: 392
- As to practice, pleadings, and forms of proceeding in civil causes, generally.  
[56 Fed. 531; 12 U. S. App. 369] 5: 586
- Giving complainant in creditors' bill priority.  
[54 Fed. 43; 8 U. S. App. 347] 4: 177
- As to right of assignee to chose in action to sue in his own name.  
[84 Fed. 278; 55 U. S. App. 598] 27: 390
- Dispensing with husband as party to action by wife.  
[56 Fed. 141; 1 U. S. App. 270] 4: 8
- As to simple contract creditor's right to maintain creditors' bill.  
[94 Fed. 728] 36: 443
- That consolidation of corporations not abate pending action.  
[52 Fed. 300; 11 U. S. App. 1] 3: 83
- State statute as to commencement of action not applicable to admiralty suits  
in Federal courts. [81 Fed. 876; 48 U. S. App. 430] 26: 665
- Mode of service on foreign corporations. [97 Fed. 22] 38: 34
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- As to continuance because of absent witness.  
[50 Fed. 814; 2 U. S. App. 213] 1: 688
- As to sufficiency of pleadings to support judgment.  
[58 Fed. 158; 12 U. S. App. 635] 7: 136
- As to allowance of amendments to pleadings. [93 Fed. 260] 35: 282
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[91 Fed. 845; 63 U. S. App. 688] 34: 103
- Amendment of pleading independently of state statute.  
[59 Fed. 752; 19 U. S. App. 448] 8: 248
- As to time of filing depositions. [59 Fed. 70; 19 U. S. App. 307] 8: 1
- Party testifying as to motive or intention.  
[57 Fed. 10; 13 U. S. App. 222, 314] 6: 231
- As to admissibility of certificate of protest of note.  
[69 Fed. 798; 32 U. S. App. 554] 16: 425
- As to communication between attorney and client.  
[51 Fed. 381; 4 U. S. App. 438] 2: 286
- Prohibiting disclosure of instruction by testator to attorney.  
[91 Fed. 458; 63 U. S. App. 120] 33: 625
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[75 Fed. 912; 43 U. S. App. 739] 21: 553
- As to admissibility of communication to physician.  
[58 Fed. 723; 19 U. S. App. 266; 22 L. R. A. 325] 7: 444
- As to form of waiver of jury. [69 Fed. 987; 34 U. S. App. 177] 16: 575
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ment. [95 Fed. 398] 37: 129
- Ground of challenge to jurors. [50 Fed. 737; 4 U. S. App. 406] 1: 642
- Requiring juries to separately assess exemplary damages.  
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- Jury trial, province of court and jury, see Note, 26: 528
- As to submitting special questions to jury, and effect of findings.  
[69 Fed. 302; 37 U. S. App. 266] 16: 232
- As to submitting propositions of law on trial by court without a jury.  
[85 Fed. 928; 57 U. S. App. 416] 29: 578
- As to requiring exceptions to charge to be made before jury retires.  
[81 Fed. 331; 52 U. S. App. 258] 26: 436
- As to recovery of officer's fees, special state statute.  
[57 Fed. 423; 13 U. S. App. 394] 6: 414
- As to summary judgment on supersedeas bond.  
[56 Fed. 790; 13 U. S. App. 554] 6: 125
- As to reference.  
[79 Fed. 817; 51 U. S. App. 88] 25: 205
- As to pleading and practice in attachment.  
[56 Fed. 570; 12 U. S. App. 409] 6: 24
- Adoption of state law relating to attachments. Id.
- As to joinder of debts in one attachment.  
[59 Fed. 752; 19 U. S. App. 448] 8: 248
- As to pleading and evidence in action on account stated.  
[56 Fed. 796; 13 U. S. App. 389] 6: 135
- In suit to determine adverse claim to unoccupied land.  
[51 Fed. 614; 10 U. S. App. 267] 2: 402
- In suit to enforce right of occupying claimant after judgment in ejectment.  
[52 Fed. 439; 10 U. S. App. 298] 3: 176
- Procedure in foreclosure suit as affected by state laws and practice, see  
Note, 24: 528
- Relative to discharge of prisoners in civil suits.  
[77 Fed. 802; 46 U. S. App. 639] 23: 467
- Enforcing bail.  
[54 Fed. 221; 12 U. S. App. 125] 4: 296
- As to enforcement of forfeited bail bonds. Id.
- As to proceedings respecting bail, in case of crimes against United States.  
[83 Fed. 151; 48 U. S. App. 531] 27: 488
- Distinction between legal and equitable forms of action preserved in Federal courts though blended in state courts. [100 Fed. 1] 40: 240
- Authority to disregard established distinctions between law and equity.  
[72 Fed. 81; 30 U. S. App. 723] 18: 438
- As to pleading and proving equitable title to defeat an action of ejectment.  
[82 Fed. 124; 49 U. S. App. 523] 27: 73
- As to equity jurisdiction in respect to land titles.  
[58 Fed. 485; 8 U. S. App. 429] 7: 330
- Abrogating equity rule as to tender of loan with legal interest as condition of relief from usury.  
[77 Fed. 32; 49 U. S. App. 620] 23: 1
- In appellate proceedings. [23 Fed. 93; 22 U. S. App. 386, 548] 11: 42
- As to reviewability, on writ of error, of ruling on motion for new trial.  
[100 Fed. 239] 40: 352
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[50 Fed. 686; 4 U. S. App. 31] 1: 613
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[72 Fed. 808; 44 U. S. App. 427] 19: 202
- In determining finality of decree for purposes of appeal.  
[70 Fed. 529; 37 U. S. App. 1, 199] 17: 251
- As to bills of exception. [76 Fed. 710; 42 U. S. App. 186] 22: 504
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[50 Fed. 906; 8 U. S. App. 86] 2: 8
- Filing, presenting, and allowance of bills of exceptions.  
[56 Fed. 188; 5 U. S. App. 443] 5: 461

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- As to allowance of interest on affirming decree.  
[75 Fed. 97; 44 U. S. App. 636] 21: 242
- As to allowance of interest by lower court after affirmance. Id.
- As to allowance of interest and method of ascertaining proportions of general average.  
[79 Fed. 368; 48 U. S. App. 245] 24: 644
- As to measure of damages for conversion of personalty. [97 Fed. 413] 38: 228
- As to inheritance of mining claim by or from alien.  
[51 Fed. 338; 10 U. S. App. 1] 2: 252
- Local law controls Federal court as to validity of chattel mortgage.  
[62 Fed. 629; 22 U. S. App. 514] 11: 66
- Act for protection of railroad employees.  
[78 Fed. 693; 47 U. S. App. 339] 24: 280
- Attorney's lien not recognized beyond that given by local law.  
[67 Fed. 837; 21 U. S. App. 658] 15: 33

**Following state statute of limitations.**

See also *infra*, VIII.

- Federal court's discretion as to following state statutes of limitation.  
[71 Fed. 60; 36 U. S. App. 361] 17: 592
- State statutes of limitation regarded as rules of decision in Federal courts.  
[73 Fed. 116; 38 U. S. App. 424] 19: 388
- Applying state statute of limitations in equity suit.  
[49 Fed. 315; 4 U. S. App. 160] 1: 256  
[58 Fed. 457; 19 U. S. App. 220] 7: 308  
[79 Fed. 848; 51 U. S. App. 194] 25: 208
- Applying state statute of limitation in equity.  
[79 Fed. 848; 51 U. S. App. 194] 25: 208
- Limitation of actions for relief on ground of fraud.  
[53 Fed. 415; 10 U. S. App. 519] 3: 578
- Following state statutes of, as to time when action against bank officers for diversion of funds barred.  
[94 Fed. 582] 36: 402

**VIII. RULE OF DECISION; FOLLOWING OTHER DECISIONS.****In general.**

- Effect of Former Decision in Same Case, see **APPEAL AND ERROR.**
- Federal courts following decisions of state courts, see Notes, 11: 80; 29: 56
- Federal courts may resort to common law as guide in proper case.  
[92 Fed. 868] 35: 62
- Administration of criminal law governed by rules of common law.  
[75 Fed. 986; 43 U. S. App. 678; 34 L. R. A. 509] 21: 586
- Doubts in construction of tariff laws resolved in importer's favor.  
[71 Fed. 394; 38 U. S. App. 25] 18: 143
- In Indian territory; absence of statute and proof of practice.  
[51 Fed. 551; 10 U. S. App. 200] 2: 367
- Determination of necessity for special legislation within exclusive province of legislature.  
[90 Fed. 222; 61 U. S. App. 41] 32: 585
- Following executive action. [83 Fed. 547; 42 U. S. App. 637] 27: 592

**Following other decisions, generally.**

- Following decision of circuit court of appeals of other circuit.  
[90 Fed. 675] 33: 217
- Construction of act of Congress adopting common-law offense.  
[58 Fed. 58; 19 U. S. App. 36; 24 L. R. A. 73] 7: 15
- Decision on particular question in tax suit followed in latter case.  
[71 Fed. 324; 37 U. S. App. 490] 18: 122
- Unappealed decision of United States circuit court, as rule of.  
[64 Fed. 553; 29 U. S. App. 12] 12: 293



## COURTS—continued.

Preliminary injunction against use of tradename, not disturbed because of subsequent decision in other court against such tradename.

[88 Fed. 642; 50 U. S. App. 394] 32: 77

**Following other decisions in patent cases.**

Following Decisions of Other Courts for Same Patents, see also APPEAL; PATENTS.

General rule. [84 Fed. 164; 51 U. S. App. 653] 28: 133

Effect in circuit court of appeals of previous decisions as to validity of patents, see Note, 3: 565

Following decision of other circuit courts of appeals in patent case.

[92 Fed. 146; 63 U. S. App. 626] 34: 248

Review of decision in patent case based below on decision in another circuit.

[69 Fed. 250; 37 U. S. App. 250] 16: 220

[72 Fed. 171; 33 U. S. App. 417] 18: 502

[82 Fed. 491; 51 U. S. App. 437] 27: 419

[96 Fed. 978] 37: 641

[89 Fed. 333; 60 U. S. App. 325] 32: 231

Establishing validity or determining construction of patent.

[72 Fed. 920; 33 U. S. App. 421] 19: 237

On appeal from order granting preliminary injunction.

[80 Fed. 712; 54 U. S. App. 1] 26: 107

Following decision of other circuit court of appeals as to allowing preliminary injunction. [91 Fed. 665; 62 U. S. App. 528] 34: 45

Infringement of patent only question where validity previously adjudicated.

[65 Fed. 551; 28 U. S. App. 325] 13: 40

In patent suit pending suit in which rehearing granted for newly discovered evidence. [99 Fed. 280] 39: 508

*Stare decisis*, rule applied in favor of prior purchaser of identical machine held in former decision not to infringe. [93 Fed. 512; 48 U. S. App. 590] 27: 576

As to validity of patent where new defense not interposed or made out.

[72 Fed. 920; 33 U. S. App. 421] 19: 237

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[70 Fed. 816; 25 U. S. App. 475] 17: 430

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[58 Fed. 286; 16 U. S. App. 221; 22 L. R. A. 817] 7: 225

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[52 Fed. 439; 10 U. S. App. 298; 18 L. R. A. 266] 3: 176

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[86 Fed. 872; 58 U. S. App. 665] 30: 445

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[89 Fed. 290; 60 U. S. App. 557] 32: 203

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[76 Fed. 166; 46 U. S. App. 281; 36 L. R. A. 139] 22: 110

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[66 Fed. 40; 27 U. S. App. 650] 13: 319

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[86 Fed. 872; 58 U. S. App. 665] 30: 445

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[86 Fed. 597; 58 U. S. App. 335] 30: 305

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[86 Fed. 370; 58 U. S. App. 397] 30: 108

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[85 Fed. 41; 42 U. S. App. 701] 29: 1

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[62 Fed. 363; 27 U. S. App. 157] 11: 88

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[49 Fed. 401; 4 U. S. App. 209] 1: 299
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[76 Fed. 296; 47 U. S. App. 36] 22: 334
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[85 Fed. 359; 52 U. S. App. 512] 29: 568
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[69 Fed. 546; 37 U. S. App. 378] 16: 305
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[96 Fed. 293] 37: 493
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[71 Fed. 443; 34 U. S. App. 552] 18: 175
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[77 Fed. 567; 40 U. S. App. 583] 23: 286
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[99 Fed. 670] 40: 65
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[63 Fed. 938; 27 U. S. App. 479] 11: 514
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[90 Fed. 513; 62 U. S. App. 270] 33: 166
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[70 Fed. 468; 34 U. S. App. 148; 30 L. R. A. 513] 17: 203
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[77 Fed. 32; 40 U. S. App. 620] 23: 1
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[71 Fed. 151; 36 U. S. App. 266] 18: 15
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[90 Fed. 178; 61 U. S. App. 576] 32: 560
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[70 Fed. 201; 36 U. S. App. 152, 30 L. R. A. 193] 17: 62
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[58 Fed. 286; 16 U. S. App. 221; 22 L. R. A. 817] 7: 225

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[51 Fed. 734; 10 U. S. App. 249] 2: 476

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[62 Fed. 335; 22 U. S. App. 267] 10: 393

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[94 Fed. 262] 36: 233

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[79 Fed. 706; 49 U. S. App. 228] 25: 151

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[52 Fed. 439; 10 U. S. App. 208; 18 L. R. A. 266] 3: 176

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[58 Fed. 297; 19 U. S. App. 1] 7: 237

[80 Fed. 162; 42 U. S. App. 411] 25: 352

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[70 Fed. 529; 37 U. S. App. 1, 199] 17: 251

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[85 Fed. 355; 56 U. S. App. 500] 29: 564

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[80 Fed. 485; 39 U. S. App. 605] 25: 581

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[80 Fed. 9; 53 U. S. App. 1] 25: 304

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[93 Fed. 44] 35: 185

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[61 Fed. 605; 22 U. S. App. 220; 24 L. R. A. 693] 9: 666

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[61 Fed. 568; 21 U. S. App. 151] 9: 542

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[97 Fed. 423] 38: 239

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[94 Fed. 781] 37: 1

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[93 Fed. 737] 35: 562

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[97 Fed. 900] 38: 541

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[98 Fed. 683] 39: 226

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[51 Fed. 182; 4 U. S. App. 574] 2: 157

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[57 Fed. 471; 13 U. S. App. 317; 21 L. R. A. 706] 6: 432

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[61 Fed. 624; 15 U. S. App. 445] 9: 680

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[94 Fed. 297] 36: 350

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[97 Fed. 719] 38: 388

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[88 Fed. 375; 60 U. S. App. 372] 31: 562
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[98 Fed. 271] 39: 76
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[90 Fed. 164; 61 U. S. App. 134] 32: 548
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[76 Fed. 271; 40 U. S. App. 257; 34 L. R. A. 518] 22: 171
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[96 Fed. 293] 37: 493
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[86 Fed. 272; 57 U. S. App. 593] 30: 32
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[99 Fed. 202] 39: 462
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[88 Fed. 749; 60 U. S. App. 38] 32: 101
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[81 Fed. 294; 52 U. S. App. 118; 38 L. R. A. 387] 26: 407
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[53 Fed. 174; 10 U. S. App. 456] 3: 497
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[66 Fed. 83; 27 U. S. App. 736] 13: 341

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**CREDITORS' SUIT.**

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**CREDITORS' SUIT**—continued.

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- By simple contract creditors of corporation, Federal jurisdiction. [60 Fed. 341; 18 U. S. App. 616; 24 L. R. A. 417] 8: 652  
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- When return of execution unsatisfied, essential. [92 Fed. 269] 34: 334
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**CRIMINAL LAW.**

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[57 Fed. 490; 13 U. S. App. 472] 6: 459

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[75 Fed. 986; 43 U. S. App. 678; 34 L. R. A. 509] 21: 586

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[53 Fed. 13; 3 U. S. App. 247] 3: 394

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[81 Fed. 694; 48 U. S. App. 376] 26: 570

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[75 Fed. 986; 43 U. S. App. 678; 34 L. R. A. 509] 21: 586

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[87 Fed. 187; 58 U. S. App. 313] 30: 612

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[75 Fed. 986; 43 U. S. App. 678; 34 L. R. A. 509] 21: 586

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[93 Fed. 452] 35: 379

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[88 Fed. 97; 59 U. S. App. 745] 31: 397

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[94 Fed. 127] 36: 105

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[81 Fed. 694; 48 U. S. App. 376] 26: 570

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[93 Fed. 452] 35: 379

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[94 Fed. 127] 36: 105

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[87 Fed. 172; 58 U. S. App. 219] 30: 596

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[93 Fed. 452] 35: 379

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Toys, music boxes as.	[65 Fed. 415; 26 U. S. App. 500]	12: 666
Toys, papier-maché rabbits as.	[89 Fed. 1025; 45 U. S. App. 763]	32: 495
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	[78 Fed. 339; 45 U. S. App. 341]	24: 121
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Wearing apparel, lace aprons as.	[55 Fed. 599; 14 U. S. App. 94]	5: 223
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"Whale and other fish oil," Japanese fish oil" as.	[77 Fed. 411; 45 U. S. App. 216]	23: 210
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Wool and hair, common goat hair as.	[51 Fed. 798; 5 U. S. App. 137]	2: 510
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Woolen goods, gloria cloth as.	[59 Fed. 452; 20 U. S. App. 222]	8: 175
Woolen goods, Tournay velvet carpets as.	[71 Fed. 513; 34 U. S. App. 452]	18: 225
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Wool separated as to colors by entire fleeces, washed wool of third class.	[55 Fed. 278; 14 U. S. App. 132]	5: 104
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## —Return of goods exported.

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## —Construction of statutes.

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- When general term has special or trade meaning.  
     [90 Fed. 409; 62 U. S. App. 244] 33: 135
- With reference to uniform practice to separately assess frames of duitable oil paintings.  
     [98 Fed. 418] 39: 121
- Descriptive phrase having no peculiar trade meaning, *e. g.* "medicinal preparation."  
     [79 Fed. 313; 45 U. S. App. 572] 24: 604

## —Under what act classified.

- When statute took effect.  
     [53 Fed. 1013; 14 U. S. App. 6] 4: 155
- Tariff act of 1897 took effect only from moment of approval by President.  
     [91 Fed. 1005; 63 U. S. App. 1] 34: 175
- Goods entered on day of, but prior to approval of, tariff act by President, dutiable under prior act.  
     Id.
- Goods arriving before, but not entered until after, statute took effect.  
     [53 Fed. 1013; 14 U. S. App. 6] 4: 155
- Goods entered before, but examined after, passage of act August 28, 1894.  
     [84 Fed. 439; 51 U. S. App. 717] 28: 453
- In case of goods abandoned to government.  
     [80 Fed. 885; 51 U. S. App. 276] 26: 216
- Theatrical costumes under bond for temporary use when new law passed.  
     [84 Fed. 878; 55 U. S. App. 433] 28: 552

## —Protest against.

- Protest against classification of collector, necessity of specifying particular ground.  
     [78 Fed. 620; 45 U. S. App. 500] 24: 265
- Importer may protest against, on alternative grounds where proper classification doubtful.  
     [91 Fed. 110; 62 U. S. App. 35] 33: 363
- Importer's right to insist on one of two alternative grounds in, although other ground sustained.  
     Id.
- Provisions of repealed act relating to protests against assessments, when operative after re-enactment.  
     [93 Fed. 651] 35: 525

## —Review of.

- Claiming wrong classification.  
     [53 Fed. 913; 20 U. S. App. 254] 4: 107
- Classification claimed correct as to part and incorrect as to part of invoices.  
     [55 Fed. 283; 14 U. S. App. 97] 5: 109
- Burden of proving wrong classification.  
     [91 Fed. 647; 62 U. S. App. 350] 34: 37
- Burden of proving incorrectness of collector's classification.  
     [67 Fed. 323; 35 U. S. App. 89] 14: 399
- Reviewing decision of general appraisers.  
     [49 Fed. 561; 6 U. S. App. 153] 2: 510  
     [51 Fed. 798; 5 U. S. App. 137] 2: 510
- When findings of facts by board of general appraisers reviewed by court.  
     [78 Fed. 332; 46 U. S. App. 625] 24: 113
- Review of finding of fact.  
     [56 Fed. 474; 11 U. S. App. 687] 5: 579
- Power of general appraisers, going outside of protest.  
     [55 Fed. 276; 14 U. S. App. 145] 5: 101
- General appraisers may allow substitution of copy for original document.  
     [65 Fed. 992; 25 U. S. App. 149] 13: 268
- Decision of general appraisers affirmed on conflicting testimony, not disturbed on appeal.  
     [72 Fed. 251; 38 U. S. App. 239] 18: 541
- Importer's failure to appear before general appraisers on appeal, effect of.  
     [71 Fed. 864; 38 U. S. App. 211] 18: 335
- Return of all evidence, presumption as to evidence.  
     [56 Fed. 474; 11 U. S. App. 687] 5: 579
- Allowance of appeal from judgment on appeal from decision of board of general appraisers.  
     [51 Fed. 798; 5 U. S. App. 137] 2: 510
- Decision, judgment.  
     [54 Fed. 147; 12 U. S. App. 47] 4: 251

**CUSTOMS DUTIES—continued.****Valuation.**

Increase of, to cover certain expenses.

[70 Fed. 778; 35 U. S. App. 744] 17: 363

Of foreign coins.

[72 Fed. 254; 38 U. S. App. 226] 18: 553

Commission on previous sale of merchandise part of wholesale price.

[68 Fed. 904; 28 U. S. App. 450] 16: 61

Taking into account increase in value of sugar by drainage during voyage.

[99 Fed. 716] 40: 84

On market value or wholesale price, at time of exportation, without adding commission paid by importer.

[91 Fed. 116; 62 U. S. App. 324] 33: 400

Authority to inquire into origin of disputed items.

[68 Fed. 904; 28 U. S. App. 450] 16: 61

Of customs appraisers, conclusive.

Id.

Review by general appraisers of collector's action as to date as to which value of foreign coins to be estimated.

[72 Fed. 254; 38 U. S. App. 226] 18: 553

Showing illegality in appraiser's action.

[70 Fed. 778; 35 U. S. App. 744] 17: 363

Showing by appraiser's testimony that statutory provisions as to reappraisal were disregarded.

Id.

Conclusiveness of findings of general appraisers.

[65 Fed. 992; 25 U. S. App. 149] 13: 268

Reviewing decision of general appraisers.

[49 Fed. 561; 6 U. S. App. 53] 1: 371

Reviewing decision so far as favorable to importer on his appeal.

[74 Fed. 546; 38 U. S. App. 655] 20: 651

Importer's duty to segregate free from dutiable goods.

[92 Fed. 343; 63 U. S. App. 262] 34: 390

Penalty for undervaluation.

[72 Fed. 260; 38 U. S. App. 250] 18: 557

**Ascertaining weight.**

Meaning of "dry weight."

[66 Fed. 50; 26 U. S. App. 596] 13: 324

No allowance for moisture in wood pulp.

Id.

No allowance for cork dust in which grapes packed.

[71 Fed. 501; 38 U. S. App. 43] 18: 221

**Fees for weighing.**

Fees for weighing and gauging merchandise abrogated.

[65 Fed. 792; 26 U. S. App. 544] 13: 134

**Drawback.**

Computation of, on linseed oil cake. [87 Fed. 453; 57 U. S. App. 716] 31: 51

On bags of imported materials leased to steamers for foreign voyages, to be brought back.

[95 Fed. 127] 37: 25

Assignment of claim for, on re-exported goods.

Id.

**Abandonment.**

Retaining amount of duty according to existing law from proceeds of sale of abandoned goods.

[80 Fed. 885; 51 U. S. App. 276] 26: 216

Abandonment of warehoused goods, government's right to sell within saving clauses.

[76 Fed. 742; 48 U. S. App. 27] 22: 527

Of undamaged goods after seizure by government, not entitle to recover back, duties paid.

[99 Fed. 426] 39: 586

**Payment and collection.**

Meaning of "payment under protest."

[66 Fed. 969; 33 U. S. App. 52] 14: 205

Filing protest after payment of duties.

Id.

Payment of duties by check intended therefor, but applied on other duties.

[68 Fed. 425; 35 U. S. App. 103] 15: 504

## CUSTOMS DUTIES—continued.

Presumption as to liquidation by collector.

[74 Fed. 549; 38 U. S. App. 647] 20: 652

Liquidation need not be made by collector of customs within a year after entry. Id.

Collector's right to retain balance of consignment for duties on entire consignment. [68 Fed. 425; 35 U. S. App. 103] 15: 504

Retaining amount of duty according to existing law, from proceeds of sale of abandoned goods. [80 Fed. 885; 51 U. S. App. 276] 26: 216

**Recovery back of duties paid.**

Recovery back of duties paid to obtain possession of packages retained by collector. [92 Fed. 918] 35: 84

Action to recover duties paid, limitation, decision by secretary or assistant secretary. [51 Fed. 868; 6 U. S. App. 128] 2: 526

Estoppel, failure to notify importer of adverse decision. Id.

Recovering back money deposited as security and actually used in payment of duties. [88 Fed. 256; 59 U. S. App. 585] 31: 524

On forfeiture and sale by United States for undervaluation. [99 Fed. 426] 39: 586

Abandonment of undamaged goods after seizure for attempted violation of law, not entitle to recover duty paid. Id.

Discontinuance of suit by importer to recover excess of duties paid on payment of part, not preclude suits for balance.

[91 Fed. 642; 63 U. S. App. 53] 34: 34

Directing verdict for defendant in action to recover duties paid. [70 Fed. 776; 35 U. S. App. 741] 17: 361

Refunding of duties on merchandise destroyed after delivery to importer on bond for redelivery. [85 Fed. 550; 54 U. S. App. 705] 29: 345

Power of Congress to make secretary of treasury final arbiter as to claims. Id.

Right to review of decision of secretary of treasury on claims for destruction of imported merchandise. Id.

**Bond.**

Bond on entry covers only damages resulting from absence of invoice.

[67 Fed. 530; 35 U. S. App. 133; 45 U. S. App. 530] 14: 515

Bond on withdrawing goods for re-export, validity and amount recoverable on. [67 Fed. 146; 30 U. S. App. 10] 14: 344

Bonded goods, abandonment, as of what time rights determined, change in rate of duty. [80 Fed. 885; 51 U. S. App. 276] 26: 216

**Costs against United States.**

Not matter of common right, consent necessary.

[62 Fed. 153; 8 U. S. App. 573] 10: 315

Costs of circuit court and of circuit court of appeals.

Review of decision of general appraisers, out of what fund payable.

[54 Fed. 147; 12 U. S. App. 47] 4: 251

Time for appeal from circuit court to circuit court of appeals on question of costs. [62 Fed. 153; 8 U. S. App. 573] 10: 315

**Crimes and penalties.**

For undervaluation of goods. [72 Fed. 260; 38 U. S. App. 250] 18: 557

Fraudulent entry, meaning of statutory words "or other person," *ejusdem generis*. [82 Fed. 627; 54 U. S. App. 273] 27: 231

Forfeiture for omission from manifest, to what merchandise applicable.

[77 Fed. 744; 48 U. S. App. 103] 23: 438

Forfeiture of goods unlawfully brought into the country by a trespasser.

[82 Fed. 627; 54 U. S. App. 273] 27: 231

Against master, enforceable against vessel, without obtaining judgment against master. [64 Fed. 579; 29 U. S. App. 197] 12: 314

## CUSTOMS DUTIES—continued.

- Liability of vessel for penalty imposed on mate. Id.  
 Seizure of vessel for violation of revenue laws.  
 [59 Fed. 476; 11 U. S. App. 749] 8: 182

**DAMAGES.**

- For Unjustifiable Appeal, see APPEAL AND ERROR.  
 Remitting Excess, see APPEAL AND ERROR.  
 Limiting Liability for Damages, see CARRIERS; SHIPPING.  
 Recoupment of, see SET-OFF AND COUNTERCLAIM.  
 Release of Claims, see RELEASE.  
 Compensation in Condemnation Proceedings, see EMINENT DOMAIN.  
 For Causing Death, see DEATH.

- Assessing treble damages separately, against defendants against whom single verdict rendered. [66 Fed. 280; 30 U. S. App. 90] 13: 436  
 Mental suffering as an element of damages for malicious prosecution, see Note, 11: 568  
 Mental suffering as an element of damages for violation of sepulcher, see Note, 11: 565  
 Mental suffering as an element of damages from sale of intoxicating liquor, see Note, 11: 570  
 Mental suffering as an element of damages from breach of promise of marriage, see Note, 11: 571  
 Mental suffering as an element of damage from seduction or criminal conversation, see Note, 11: 569  
 Mental suffering as an element of damages for false imprisonment, see Note, 11: 567  
 For delay in constructing bridge due to authorities of townships jointly contracting with street railroad for construction. [100 Fed. 197] 40: 325  
 Allowance of all damages established on day of trial if proximate result of tort. [85 Fed. 523; 56 U. S. App. 529] 29: 318  
 Necessity of specially alleging items of damage. [57 Fed. 368; 14 U. S. App. 615] 6: 394  
 Necessity as to alleging and proving that damages sued for not paid. [97 Fed. 882] 38: 528  
 Sympathetic affection of other parts of body than those mentioned in declaration. [80 Fed. 278; 53 U. S. App. 22] 25: 413  
 Allowance for destruction of shade trees under complaint claiming damages for destruction of dwelling house and outhouse. [80 Fed. 474; 42 U. S. App. 449] 25: 570  
 Evidence as to solvency of judgment debtor after wrongful discharge of judgment. [75 Fed. 959; 45 U. S. App. 79; 33 L. R. A. 250] 21: 581  
 Argument of counsel misleading jury as to true measure of. [84 Fed. 772; 52 U. S. App. 442] 28: 207  
 Instruction authorizing jury to fix damages at what they think proper. [71 Fed. 487; 34 U. S. App. 444] 18: 211

**Nominal.**

See also *infra*, **Patents.**

- In action against telegraph company, see Notes, 15: 235; 28: 61  
 Reversing judgment against plaintiff entitled to. [97 Fed. 176] 38: 103  
 For breach of collecting bank's duty, when nominal. [56 Fed. 967; 16 U. S. App. 1] 6: 183  
 Breach of contract, failure to agree on price. [62 Fed. 130; 20 U. S. App. 121] 10: 302  
 For Indian agent's technical failure to account for property remaining at agency. [73 Fed. 800; 36 U. S. App. 645] 20: 11  
 For conversion of judgment. [75 Fed. 959; 45 U. S. App. 79; 33 L. R. A. 250] 21: 581

**DAMAGES—continued.**

Failure to award, not ground for reversal. [95 Fed. 250] 37: 62

Ejecting passenger from train. [52 Fed. 197; 6 U. S. App. 98; 17 L. R. A. 800] 3: 23

**Exemplary.**

In action against telegraph company, see Notes, 15: 235; 28: 62

See also *infra*, **Libel**.

Liability of corporation, see Note, 39: 18

State statutes requiring separate assessment of, not followed in Federal court. [94 Fed. 762] 36: 475

Error in permitting exemplary damages, curing.

[57 Fed. 822; 18 U. S. App. 279] 6: 597

Right not dependent on proof of actual damage.

[73 Fed. 196; 38 U. S. App. 410] 19: 429

In action for conversion, when allowed.

[79 Fed. 931; 51 U. S. App. 106] 25: 244

Against principal accepting fruits of agent's trespass.

[66 Fed. 133; 27 U. S. App. 752] 13: 480

Repudiating mileage ticket.

[96 Fed. 929] 37: 628

Ejecting passenger from train. [57 Fed. 822; 18 U. S. App. 279] 6: 597

Death of child caused by employee's wilful assault.

[91 Fed. 462; 63 U. S. App. 422] 33: 629

For unlawful publication of copyrighted poem.

[73 Fed. 196; 38 U. S. App. 410] 19: 429

**Breach of contracts, generally.**

By reason of special circumstances must have been such as could have been reasonably foreseen and estimated. [97 Fed. 176] 38: 103

For breach of warranty of title of land paid for with railroad bonds.

[86 Fed. 235; 57 U. S. App. 526] 30: 17

Measure of, for breach of lessee's covenant to deliver premises in good repair.

[83 Fed. 95; 55 U. S. App. 59] 27: 462

Furnishing gas piping inferior, but sufficient to stand maximum pressure allowed by law.

[73 Fed. 984; 46 U. S. App. 52] 20: 233

For holder of indorsed note exchanging collateral without indorser's consent.

[69 Fed. 798; 32 U. S. App. 554] 16: 425

Reduction from contract price of damages from failure to perform strictly.

[81 Fed. 261; 49 U. S. App. 438] 26: 389

Contract to exchange securities. [74 Fed. 177; 38 U. S. App. 665] 20: 371

To adopt one and make him heir. [94 Fed. 83] 36: 103

To loan money where no definite time for continuance of loan agreed on.

[97 Fed. 176] 38: 103

Recovery for money deposited to secure execution when contract invalid.

[74 Fed. 363; 42 U. S. App. 64] 20: 453

Bonus for erection of mill, when failure to show damages.

[54 Fed. 627; 13 U. S. App. 195] 4: 525

Value of stock given by stockholders as bonus to procure other loan.

[97 Fed. 176] 38: 103

Measure of, when special circumstances known to both parties exist.

[82 Fed. 685; 53 U. S. App. 525] 27: 526

Disappointment and mental suffering from breach of contract for special train.

[52 Fed. 264; 8 U. S. App. 118; 17 L. R. A. 804] 3: 73

Withdrawal of guaranty, loss of profits.

[66 Fed. 27; 26 U. S. App. 656] 13: 308

Based on estimated rental value of houses not erected because of breach of contract to loan money to pay therefor.

[92 Fed. 449] 34: 452

Right to recover money and labor reasonably expended in good faith in reliance on contract.

[99 Fed. 222] 39: 476

**DAMAGES—continued.**

Right to claim for losses and expenses incurred on faith of contract and also for loss of profits. Id.

Right of insurance agent employed for term of years to recover for loss of commissions on transferring business to other agents. Id.

**Breach of contract of sale—In general.**

For Fraud in Inducing Purchase, see *infra*, **Fraud**.

Only such as naturally flow from breach or reasonably to be anticipated.

[92 Fed. 293] 34: 354

Special damages, knowledge of special circumstances. Id.

Recovery of lost profits governed by same rule as of other damages. Id.

Goods to be manufactured, notice given before manufacturing done.

[92 Fed. 486] 34: 489

Natural and probable result of breach and reasonably to be anticipated, but not susceptible of reasonably certain proof. [92 Fed. 293] 34: 354

**—Failure to deliver.**

Failure to agree on price, nominal. [62 Fed. 136; 26 U. S. App. 121] 10: 302

Limited to difference between contract price and market value of goods sold.

[92 Fed. 290] 34: 351

Seller's refusal to deliver on credit with offer to deliver for cash at reduced price. [63 Fed. 62; 22 U. S. App. 483; 26 L. R. A. 167] 11: 27

Loss of earnings from failure to furnish new machinery where no notice of necessity given. [92 Fed. 293] 34: 354

Failure to deliver goods, purchasing substitute.

[55 Fed. 812; 5 U. S. App. 26] 5: 276

Of goods not separated from mass in seller's possession.

[64 Fed. 569; 22 U. S. App. 655] 12: 306

Difference between contract price and that at which responsible parties will fulfil contract. [91 Fed. 345; 62 U. S. App. 520] 33: 550

**—Refusal to receive.**

Refusal to accept generally. [76 Fed. 427; 39 U. S. App. 335] 22: 261

Failure to receive timber to be delivered at certain points.

[74 Fed. 444; 42 U. S. App. 21] 20: 503

Failure to accept delivery of goods, profit.

[62 Fed. 569; 17 U. S. App. 514] 10: 546

Difference between market value and contract price of marketable products manufactured out of cotton seed. [99 Fed. 339] 39: 546

Provision for forfeiture of cash payment for growing crop of oranges if purchase not completed. [98 Fed. 692] 39: 235

**—Breach of warranty.**

What is measure of damages for. [73 Fed. 994; 36 U. S. App. 634] 20: 244

When enhanced damages recoverable.

[91 Fed. 213; 50 U. S. App. 461] 33: 456

Warranty as to goods, loss of trade. [57 Fed. 467; 16 U. S. App. 30] 6: 428

Warranty as to goods, profits of resale.

[57 Fed. 451; 15 U. S. App. 218] 6: 416

Warranty as to cotton, cost of reselling and replacing.

[57 Fed. 355; 13 U. S. App. 443] 6: 381

Warranty as to machine, measure of damages.

[55 Fed. 451; 3 U. S. App. 631] 5: 190

Warranty as to machine, advertising expenses, losses in business. Id.

Of storage battery plant which proves worthless.

[64 Fed. 70; 27 U. S. App. 364] 12: 37

Evidence to explain delay in selling goods to save loss.

[80 Fed. 930; 51 U. S. App. 286] 26: 250

**DAMAGES—continued.****Insurance.**

- Measure of, for insurer's breach of obligation to repair.  
[82 Fed. 546; 54 U. S. App. 215] 27: 223
- Money indemnity stipulated as standard for damages from breach of rebuilding agreement. Id.

**Bonds; penalty or liquidated damages.**

- Measure of, in action on penal bond, interest.  
[51 Fed. 625; 7 U. S. App. 285] 2: 415
- Measure of, in action on bond to indemnify policy holders.  
[79 Fed. 420; 49 U. S. App. 148] 24: 650
- Costs not within rule that damages cannot exceed penalty.  
[93 Fed. 616] 35: 488
- On bond for injunction against action at law, right to credit for money collected on judgment at law. [85 Fed. 523; 56 U. S. App. 529] 29: 318
- Sufficiency of denial to put plaintiff on proof as to liquidated damages.  
[95 Fed. 615] 37: 200
- Single sum applicable to each of several covenants of contracts, penalty.  
[95 Fed. 250] 37: 62
- Amount fixed for terminating lease before expiration.  
[65 Fed. 794; 25 U. S. App. 134] 13: 137
- Recovery for full amount proved irrespective of question whether provision for liquidated damages or penalty. [72 Fed. 988; 44 U. S. App. 480] 21: 352
- For mining and converting ore. [97 Fed. 150] 38: 89

**For trespass.**

- Mental suffering as an element of, see Note, 11: 564
- For unlawful taking ore from other's vein.  
[70 Fed. 294; 36 U. S. App. 208] 17: 128
- When exemplary, principal accepting fruits of agent's trespass.  
[66 Fed. 133; 27 U. S. App. 752] 13: 480
- For inadvertently taking ore from other's mine.  
[93 Fed. 166] 35: 252
- Sum equal to legal interest for mining and converting ore.  
[97 Fed. 150] 38: 89

**Conversion, detention, or destruction of personalty, generally.**

- State statute fixing, followed in Federal court. [97 Fed. 413] 38: 228
- Mental suffering as an element, see Note, 11: 564
- Wrongful attachment of goats. [54 Fed. 855; 13 U. S. App. 39] 4: 616
- Of goods, market value. [79 Fed. 931; 51 U. S. App. 106] 25: 244
- When punitive damages may be awarded. Id.
- Price at which pledgeor reacquired stock as evidence of its value when pledgee sold it. [85 Fed. 539; 56 U. S. App. 556] 29: 333
- Measure of, for conversion of property afterwards recovered. Id.
- For conversion of judgment, when nominal.  
[75 Fed. 959; 45 U. S. App. 79; 33 L. R. A. 250] 21: 581
- Expenses of plaintiff recoverable only, when property recovered.  
[89 Fed. 907; 61 U. S. App. 69] 32: 406
- Plaintiff's affidavit as to value of goods restored.  
[59 Fed. 70; 19 U. S. App. 307] 8: 1
- By chattel mortgagor, for unlawful sale by mortgagee.  
[94 Fed. 288] 36: 253
- Of logs, by innocent purchasers from one warranting title.  
[70 Fed. 570; 37 U. S. App. 407] 17: 225
- For destruction of hay, no local market value.  
[49 Fed. 807; 4 U. S. App. 247] 1: 441

**DAMAGES—continued.****Failure to issue or return process.**

Clerk's failure to issue process. [78 Fed. 584; 47 U. S. App. 306] 24: 249

Marshal's failure to return execution. [70 Fed. 199; 36 U. S. App. 199] 17: 60

**Expulsion from corporation or association.**

For cancellation of membership in news association, measure and proof. [51 Fed. 377; 10 U. S. App. 72] 2: 282

For exclusion from association. Id.

For exclusion from corporation. [51 Fed. 63; 3 U. S. App. 125] 2: 97

**For misconduct of agent or corporate officers.**

Expense of unsuccessfully resisting enforcement of condition of note negligently purchased of officer for bank. [83 Fed. 738; 54 U. S. App. 532] 28: 66

For agent's retention of stocks received on contract made for principal. [74 Fed. 94; 36 U. S. App. 749] 20: 312

Against bank directors, for improperly disposing of stock. [86 Fed. 505; 58 U. S. App. 648] 30: 223

**Fraud.**

For fraud in inducing purchase of goods. [73 Fed. 994; 36 U. S. App. 634] 20: 244

Measure of damage for fraudulently inducing contract of sale, purchase or exchange. [76 Fed. 909; 40 U. S. App. 666; 35 L. R. A. 633] 22: 608

For false representations inducing purchase. [55 Fed. 584; 3 U. S. App. 545] 5: 210

For false representations inducing purchase of business enterprise. [57 Fed. 368; 14 U. S. App. 615] 6: 394

Purchaser's recovery on rescission of contract for fraud. [73 Fed. 994; 36 U. S. App. 634] 20: 244

**For death.**

For death by wrongful act, see Note, 1: 33

Mental suffering as an element of, see Note, 11: 556

To whom inure. [78 Fed. 576; 47 U. S. App. 402] 24: 321

What sufficient proof of pecuniary damages. [57 Fed. 536; 15 U. S. App. 193] 6: 474

Method of determining, mathematical computation. [52 Fed. 371; 10 U. S. App. 339] 3: 129

Mitigation by receiving insurance on life of deceased. [94 Fed. 745] 36: 450

Resulting from wilful and wanton assault by employee without authority. [91 Fed. 462; 63 U. S. App. 422] 33: 629

Of minor son. [92 Fed. 953] 35: 105

For killing of child from unauthorized and wilful assault by employee. [91 Fed. 462; 63 U. S. App. 422] 33: 629

Carrier's limitation of liability for injury not include statutory liability to third persons in case of death. [86 Fed. 447; 57 U. S. App. 473] 32: 295

Loss of dower, contingencies. [52 Fed. 371; 10 U. S. App. 339] 3: 129

Whether deceased suffered mental or bodily pain, questions for jury. [61 Fed. 592; 22 U. S. App. 187] 9: 646

Amounts allowed for drowning of master and cook of vessel. [73 Fed. 239; 44 U. S. App. 434; 46 L. R. A. 264] 19: 481

Amounts allowed for mental and physical suffering of seamen drowned. [70 Fed. 270; 33 U. S. App. 297] 17: 90

Evidence as to ages of children of deceased. [48 Fed. 57; 4 U. S. App. 25] 1: 25

**For personal injuries—In general.**

In case of Death, see DEATH.



**DAMAGES—continued.**

- Division in admiralty when master and servant both at fault, see Note, 30: 678
- Mental suffering as an element, see Note, 11: 556
- Compelling physical examination of one suing for personal injuries.  
[80 Fed. 278; 53 U. S. App. 22] 25: 413
- Right to damages reduced, but not barred by contributory negligence.  
[88 Fed. 455; 60 U. S. App. 140] 32: 1
- For mental suffering from crippled condition.  
[63 Fed. 396; 27 U. S. App. 358] 11: 552
- Doctors' and nurses' bills. [79 Fed. 291; 49 U. S. App. 81] 24: 592
- Abscess, proximate cause. [56 Fed. 994; 12 U. S. App. 520] 6: 211
- Instruction as to loss of society. [83 Fed. 82; 48 U. S. App. 757] 27: 457
- Loss of companionship or society of husband.  
[48 Fed. 57; 4 U. S. App. 25] 1: 23
- Injuries resulting from fright accompanied by slight physical injury.  
[84 Fed. 870; 55 U. S. App. 427] 28: 544
- For injury to leader of theatrical troupe.  
[87 Fed. 149; 58 U. S. App. 131] 32: 19
- Damages recoverable though no injury exhibited for several days after accident.  
[92 Fed. 1021] 35: 167
- Amount of, question for jury. [97 Fed. 882] 38: 523

**—To wife or child.**

- Mental suffering as an element, see Note, 11: 562
- Submission to jury of evidence of charge made by physician for treatment. Id.
- Nursing wife and doing her work, measure of compensation for.  
[58 Fed. 152; 12 U. S. App. 665] 7: 130  
[58 Fed. 158; 12 U. S. App. 675] 7: 136
- What recoverable, in joint action for injuries to wife.  
[70 Fed. 664; 37 U. S. App. 462] 17: 325
- Recoverable by father for injuries to minor child, general rule.  
[59 Fed. 417; 20 U. S. App. 225] 8: 169
- To child, question as to past or prospective service of value to father. Id.

**—Prospective damages.**

- Future mental suffering, see Note, 11: 580
- When not to be considered. [83 Fed. 992; 55 U. S. App. 211] 28: 56
- Requested instruction, negating recovery for merely possible or probable future effects from injuries. [49 Fed. 209; 4 U. S. App. 109] 1: 231
- Future suffering and disability. [49 Fed. 343; 4 U. S. App. 115] 1: 282  
[49 Fed. 801; 4 U. S. App. 264] 1: 435

**—Loss or impairment of earning capacity.**

- Loss of earning capacity. [73 Fed. 634; 43 U. S. App. 113] 19: 623
- Depriving one of earning power, measure of damages.  
[84 Fed. 772; 52 U. S. App. 442] 28: 207
- Impairing ability to carry on occupation as school-teacher.  
[88 Fed. 226; 60 U. S. App. 104] 31: 499

**—When excessive or inadequate.**

- Ten thousand dollars for personal injuries to adult.  
[49 Fed. 696; 7 U. S. App. 84] 1: 416
- Verdict of \$15,000 held not excessive. [75 Fed. 102; 44 U. S. App. 517] 21: 246
- Two thousand dollars for broken arm. [60 Fed. 210; 13 U. S. App. 655] 8: 571
- Seven thousand five hundred dollars for injury rendering railroad laborer a paralytic.  
[56 Fed. 804; 18 U. S. App. 10] 6: 142
- Three thousand dollars, loss of earnings and expenses of illness from compound fracture of bones of leg. [56 Fed. 621; 15 U. S. App. 98] 6: 54

**DAMAGES—continued.**

Two thousand two hundred and eighty-six dollars for loss of leg by stevedore's laborer. [52 Fed. 390; 8 U. S. App. 129] 35: 155

Two thousand dollars not excessive for breaking seaman's leg. [94 Fed. 871] 36: 519

Four thousand dollars for injury necessitating amputation of seaman's leg. [86 Fed. 886; 58 U. S. App. 104] 30: 675

**—Evidence admissible.**

For personal injuries as affected by plaintiff's character and condition, see Note, 27: 138

Action for personal injuries, evidence that plaintiff has a wife and child. [81 Fed. 807; 54 U. S. App. 110] 26: 626

In action for death, proof of nature of injuries. [79 Fed. 262; 49 U. S. App. 112] 24: 563

Permitting plaintiff in action for personal injuries to prove that he is a married man. [82 Fed. 153; 51 U. S. App. 503] 27: 136

That plaintiff was a sober and industrious man, personal injuries. Id.

Admissibility of evidence of poverty of plaintiff and his relatives. [84 Fed. 772; 52 U. S. App. 442] 28: 207

As to drinking habits of plaintiff in personal injury suit. [56 Fed. 288; 15 U. S. App. 92] 5: 510

As to past earnings in action for personal injuries. [76 Fed. 517; 46 U. S. App. 300] 22: 306

Showing occupation and rate of wages, without allegation of special damage. [87 Fed. 135; 59 U. S. App. 708] 30: 580

**Against carriers of freight, generally.**

Against initial carrier for wilfully misrouting goods, increasing freight rate. [86 Fed. 846; 58 U. S. App. 173] 30: 430

Carrier charging excessive rates of freight for lumber. [68 Fed. 864; 30 U. S. App. 451] 16: 42

**Failure in duty to passenger.**

Mental suffering as an element of, see Note, 11: 566

Ejecting passenger. [57 Fed. 822; 18 U. S. App. 279] 6: 597

Ejecting passenger, when nominal. [52 Fed. 197; 6 U. S. App. 298; 17 L. R. A. 800] 3: 23

Wrongful expulsion, resistance, mitigation. [57 Fed. 822; 18 U. S. App. 279] 6: 597

For increased injury from forcible resistance to expulsion. [67 Fed. 662; 34 U. S. App. 14] 14: 612

Sleeping-car company giving ticket for car on wrong road. [99 Fed. 380] 39: 573

Wrongful expulsion from sleeping-car berth, miscarriage. [54 Fed. 646; 13 U. S. App. 183; 21 L. R. A. 289] 4: 540

Exemplary, for repudiating mileage ticket, resulting in passenger's ejection. [96 Fed. 929] 37: 628

Amount of, for unlawful ejection, not dependent on conductor's good faith. [67 Fed. 662; 34 U. S. App. 14] 14: 612

Carrying past station. [52 Fed. 94; 2 U. S. App. 342] 2: 633

Insanity as proximate result of accident from carrier's negligence. [60 Fed. 557; 23 U. S. App. 80; 23 L. R. A. 774] 9: 134

**Delay in sending or delivering telegrams.**

Mental suffering as an element of damage from negligent delay in delivering telegram, see Note, 11: 571

Measure of, in actions against telegraph companies, see Notes, 14: 177; 15: 235; 28: 59

Knowledge of purpose and importance of message, see Notes, 15: 259; 28: 6

**DAMAGES—continued.**

- For nondelivery of obscure telegram. [68 Fed. 137; 32 U. S. App. 245] 15: 231  
 Change of price of stocks. [48 Fed. 810; 2 U. S. App. 24] 1: 107  
 For delay in sending telegram, effect of operators' familiarity with method of dealing on stock exchange. Id.  
 Delay in delivering telegram, announcing illness, mental suffering. [57 Fed. 471; 13 U. S. App. 317; 21 L. R. A. 706] 6: 432

**In admiralty—In general.**

- General Average in Case of Loss, see SHIPPING.  
 Increased cost of repairs from unsoundness of parts adjacent to those injured by collision. [98 Fed. 133] 38: 670  
 One vessel recouping half damages for death of passenger on other where both in fault. [87 Fed. 948; 59 U. S. App. 108] 31: 315  
 Full damages for death of passenger on one vessel against other, when both in fault. Id.  
 Average charges assessed against cargo recoverable by owner from ship in case of negligent collision. [66 Fed. 604; 35 U. S. App. 6] 13: 653  
 Property of passenger on pilot boat. [58 Fed. 427; 14 U. S. App. 655] 7: 285

**—Breach of charter party.**

- For breach of charter party, generally. [55 Fed. 666; 6 U. S. App. 581] 5: 229  
 Measure of, for breach of charter party in failing to make stipulated number of trips. Id.  
 Measure of, for delay of vessel in arriving at loading port. [50 Fed. 835; 3 U. S. App. 147] 2: 45

**—Injuries to or loss of vessel—In general.**

- Duty to mitigate, burden and presumptions as to. [79 Fed. 445; 50 U. S. App. 11] 25: 32  
 Interest on value of vessel as part of damages. [53 Fed. 288; 1 U. S. App. 614] 3: 534  
 Interest as part of damages for detention. [78 Fed. 183; 41 U. S. App. 708] 24: 49  
 Making prima facie proof by producing bills and witnesses who testify that they paid them. [81 Fed. 227; 39 U. S. App. 638] 26: 338  
 Injury to vessel from unsafe berth. [55 Fed. 87; 5 U. S. App. 270] 5: 49  
 Determining amount of, from evidence after decree *pro confesso*. [90 Fed. 435; 61 U. S. App. 521] 33: 161  
 Destruction of yacht having no established market value. [77 Fed. 226; 33 U. S. App. 647] 23: 123  
 Relevancy of inquiry as to what one would pay for such a yacht. Id.  
 Sinking vessel, effect of raising vessel. [50 Fed. 331; 1 U. S. App. 138] 1: 519  
 Sinking vessel, when vessel a total loss. [58 Fed. 427; 14 U. S. App. 655] 7: 285  
 Sinking vessel, no established market value, cost, age, probable future life. Id.  
 Award of cost of repairs of vessel, services of part owner in overseeing. [54 Fed. 404; 7 U. S. App. 652] 4: 393

**—Mutual fault; divided damages.**

- Division of damages when master and servant both at fault, see Note, 30: 678  
 Apportioning or dividing. [74 Fed. 899; 33 U. S. App. 510] 21: 162  
 Burden of proof on manifest wrongdoer. [62 Fed. 71; 22 U. S. App. 242] 10: 262  
 By obstruction in draw of bridge, both parties negligent. [63 Fed. 626; 24 U. S. App. 49] 11: 366  
 Division of, when wharfinger and vessel both in fault as to unsafe berth. [55 Fed. 87; 5 U. S. App. 270] 5: 49

**DAMAGES—continued.**

Damages divided when both vessels at fault.

[73 Fed. 883; 43 U. S. App. 190] 20: 86

[92 Fed. 944] 35: 97

When collision caused by improper speed of steamer and want of proper fog horn on schooner.

[40 Fed. 169; 1 U. S. App. 26]. 1: 221

**—Detention; loss of earnings or use of vessels.**

Interest as part of damages for detention.

[78 Fed. 183; 41 U. S. App. 708] 24: 49

Loss occasioned by detention

[81 Fed. 227; 39 U. S. App. 638] 26: 338

Measure of damage, chartered vessel.

[50 Fed. 845; 3 U. S. App. 171] 2: 55

Amount of, how determined.

[54 Fed. 404; 7 U. S. App. 652] 4: 393

Computing damages on basis of average earnings while vessel injured by collision laid up for repairs.

[98 Fed. 133] 38: 670

Measure for injury to vessel, value of use during necessary detention.

[54 Fed. 404; 7 U. S. App. 652] 4: 393

When injured barge in tow of consort belonging to same owners.

[59 Fed. 483; 16 U. S. App. 577] 8: 188

Effect of substituting other vessel of same owner.

[50 Fed. 845; 3 U. S. App. 171] 2: 55

[54 Fed. 404; 7 U. S. App. 652] 4: 393

Ability to earn bounty.

[53 Fed. 288; 1 U. S. App. 614] 3: 534

Net freight on subsequent voyage from immediate destination for which vessel already engaged.

Id.

**—Injury to or loss of cargo.**

Total loss, how value determined.

[59 Fed. 489; 11 U. S. App. 612] 8: 194

No liability where damaged goods sold for full market price of sound goods.

[73 Fed. 352; 38 U. S. App. 369] 19: 449

Liability of vessel for damage to cargo measured by degree of fault.

[68 Fed. 395; 25 U. S. App. 271] 15: 490

When cargo recovered, effect of rebate of duty.

[59 Fed. 489; 11 U. S. App. 612] 8: 194

Cargo owners entitled to complete indemnity when vessel mutually at fault.

[68 Fed. 395; 25 U. S. App. 271] 15: 490

Extent of vessel owner's liability of claim for loss of cargo purchased by other vessel owner equally in fault.

[64 Fed. 809; 26 U. S. App. 409] 12: 613

Only half damages recoverable against other vessel by members of crew for loss of personal effects, where both vessels in fault.

[87 Fed. 948; 59 U. S. App. 108] 31: 315

**Patent cases—In general.**

Where royalty cannot be calculated with mathematical certainty.

[64 Fed. 585; 29 U. S. App. 116] 12: 316

Apportioning all damages to particular claim.

Id.

Failure to separate profits on infringing from those on noninfringing parts.

[81 Fed. 957; 53 U. S. App. 404] 27: 21

Design patent, net profits.

[58 Fed. 205; 20 U. S. App. 32] 7: 183

For infringement of improvement of carts.

[67 Fed. 542; 29 U. S. App. 572] 14: 517

For infringement of patent for pioneer invention.

[69 Fed. 371; 37 U. S. App. 299] 16: 259

For wanton infringement, where cost of manufacture readily computed.

[94 Fed. 177] 36: 132

Resolving doubt as to sufficiency of evidence to warrant against infringer.

Id.

Computation of, where patentee manufactures patented article.

Id.

Utility and advantage to defendant.

[60 Fed. 98; 8 U. S. App. 503] 8: 500

**DAMAGES—continued.**

- Design patent, liquidated profits, failure to mark "patented." [58 Fed. 398; 17 U. S. App. 184] 7: 272
- Recovery of whole profits on infringing article. [86 Fed. 917; 57 U. S. App. 66] 30: 487
- Profits on entire machine when improvement only infringed. [51 Fed. 441; 6 U. S. App. 107] 2: 322
- Double damages for deliberate purchase of infringing goods after preliminary injunction. [86 Fed. 917; 57 U. S. App. 66] 30: 487
- Loss of contracts. [75 Fed. 971; 39 U. S. App. 297] 21: 584
- Mode of measuring profits from use of patented machine. [76 Fed. 227; 45 U. S. App. 105] 22: 138

**—Nominal.**

- When nominal, generally. [53 Fed. 257; 7 U. S. App. 524] 3: 525  
[81 Fed. 863; 48 U. S. App. 372] 26: 652
- When no evidence of value of patent. [74 Fed. 636; 41 U. S. App. 309] 20: 568
- Only nominal allowed, where patent unknowingly infringed. [91 Fed. 655; 63 U. S. App. 97] 34: 39
- For infringement of patent not shown of value to owner. [91 Fed. 248; 50 U. S. App. 447] 33: 485

**Infringing copyright or tradename.**

- For unlawful use of tradename, effect of letter intimating that no suit would be brought. [51 Fed. 941; 5 U. S. App. 112; 17 L. R. A. 354] 2: 555
- For unlawful publication of copyrighted poem. [73 Fed. 196; 38 U. S. App. 410] 19: 429

**Libel—In general.**

- Mental suffering as an element of damages, see Note, 11: 568
- Against corporation for circulating libel in newspaper. [94 Fed. 762] 36: 475
- Matter in mitigation for publishing libel must be pleaded. Id.
- For publishing telegraphic dispatch rendered libelous in transmission. [63 Fed. 238; 26 U. S. App. 167; 26 L. R. A. 531] 11: 155
- Plaintiff's general social standing considered. Id.
- For injury to good name. [94 Fed. 762] 36: 475
- That woman charged with unchastity had young children considered on question of. [72 Fed. 443; 34 U. S. App. 607] 18: 628
- Interposition in bad faith of defenses not proved considered in aggravation of damages. [98 Fed. 925] 40: 163
- Confining jury to effect of circulation naturally resulting from sending libelous letter. [98 Fed. 222] 39: 19
- Amount not reviewable by circuit court of appeals. [98 Fed. 925] 40: 163

**—Exemplary.**

- Question for jury whether rule of paper shows wanton disregard of others' rights, authorizing. [78 Fed. 769; 45 U. S. App. 636] 24: 329
- When publication made with ill will or wilful intent to injure. [94 Fed. 762] 36: 475
- Reckless disregard equivalent to intentional violation of libeled person's rights and feelings. Id.
- When libel published with ill will or wilful intent to injure. Id.
- Where libel published with reckless disregard of libeled person's rights. Id.
- Against corporation, for publishing libel in newspaper. Id.
- Reliance on report of news agency. [55 Fed. 240; 14 U. S. App. 173] 5: 91
- Copying from other paper. [51 Fed. 513; 1 U. S. App. 296; 16 L. R. A. 803] 2: 354

**DAMAGES—continued.**

For publishing unrepeat telegraph despatch rendered libelous by error in transmission. [63 Fed. 238; 26 U. S. App. 167; 26 L. R. A. 531] 11: 155

**—Pleadings; proof; instructions.**

In libel when special damages must be alleged.

[82 Fed. 169; 52 U. S. App. 381] 27: 100

Requested instruction that article read only by intimate friends.

[55 Fed. 240; 14 U. S. App. 173] 5: 91

Refusal of instruction that jury may find verdict for nominal damages.

[84 Fed. 758; 51 U. S. App. 689] 28: 522

Requested instruction negating proof of publication at plaintiff's home.

[55 Fed. 240; 14 U. S. App. 173] 5: 91

Instruction characterizing publication as damaging.

Id.

Requested instruction negating evidence tending to show actual damage. Id.

Instruction as to arithmetical calculation.

Id.

Without alleging or proving malice.

[94 Fed. 702] 36: 475

**Assault.**

Mental suffering as an element of, see

Note, 11: 561

Compensation for mental pain and suffering necessarily resulting from original injury, recoverable.

[93 Fed. 936] 36: 46

Necessarily resulting from assault and battery.

Id.

**Loss of profits or contracts.**

In action against telegraph companies, see

Notes, 15: 236; 28: 59

Breach of contract not to use property in competition.

[83 Fed. 779; 54 U. S. App. 439] 28: 80

In patent cases.

[58 Fed. 205; 20 U. S. App. 32] 7: 183

[58 Fed. 398; 17 U. S. App. 184] 7: 272

[76 Fed. 227; 45 U. S. App. 105] 22: 138

[86 Fed. 917; 57 U. S. App. 66] 30: 487

From delay on railway resulting in theatrical troupe failing to arrive at destination in time.

[87 Fed. 149; 58 U. S. App. 131] 32: 19

Loss of profits by one who has not commenced performance.

[66 Fed. 140; 25 U. S. App. 166] 13: 375

As item of damages for deceit.

[57 Fed. 368; 14 U. S. App. 615] 6: 394

Liability for loss of profits from noncompletion of contract by withdrawal of guaranty.

[66 Fed. 27; 26 U. S. App. 656] 13: 308

When items too remote and speculative, impairment of value of patents, loss of contracts.

[75 Fed. 971; 39 U. S. App. 297] 21: 584

Mode of measuring profits from use of patented machine.

[76 Fed. 227; 45 U. S. App. 105] 22: 138

On breach of contract of sale, rule governing.

[92 Fed. 293] 34: 354

Of resale; breach of warranty.

[57 Fed. 451; 15 U. S. App. 218] 6: 416

Losses in business, breach of warranty of machines.

[55 Fed. 451; 3 U. S. App. 631] 5: 190

Refusal to accept goods.

[62 Fed. 569; 17 U. S. App. 514] 10: 546

Loss of trade, breach of warranty.

[57 Fed. 467; 16 U. S. App. 30] 6: 428

**Interest.**

Interest on damages.

[51 Fed. 63; 3 U. S. App. 125] 2: 97

Allowance of, in judgment in replevin.

[80 Fed. 954; 54 U. S. App. 54] 26: 272

Interest as damages, allowance or denial of, according to equity.

[80 Fed. 604; 47 U. S. App. 679] 26: 23

Withdrawing jury's discretion as to interest.

[49 Fed. 807; 4 U. S. App. 247] 1: 441

**DAMAGES—continued.**

- Allowing interest on damages awarded to full amount asked.  
     [66 Fed. 898; 29 U. S. App. 227] 14: 166
- Allowance of, as part of damages for detention in collision case.  
     [78 Fed. 183; 41 U. S. App. 708] 24: 49
- On vessel, as part of damages. [53 Fed. 288; 1 U. S. App. 614] 3: 534
- In action on penal bond. [51 Fed. 625; 7 U. S. App. 285] 2: 415

**Mental anguish.**

- See Note, 11: 556
- In action against telegraph company, see Notes, 11: 571; 15: 235; 28: 62
- From breach of contract for special train.  
     [52 Fed. 264; 8 U. S. App. 118; 17 L. R. A. 804] 3: 73
- From assault and battery. [93 Fed. 936] 36: 46
- Caused by delay in delivering telegram.  
     [57 Fed. 471; 13 U. S. App. 317; 21 L. R. A. 706] 6: 432
- Question for jury whether deceased suffered mental pain.  
     [61 Fed. 592; 22 U. S. App. 187] 9: 646
- From crippled condition. [63 Fed. 396; 27 U. S. App. 358] 11: 552
- Amount for mental suffering of seaman drowned.  
     [70 Fed. 270; 33 U. S. App. 207] 17: 90

**Mitigation.**

- Wrongful expulsion from train. [57 Fed. 822; 18 U. S. App. 279] 6: 597
- In libel case, necessity of pleading. [94 Fed. 762] 36: 475
- Duty to mitigate in case of collision. [79 Fed. 445; 50 U. S. App. 11] 25: 32
- By receiving insurance on deceased's life. [94 Fed. 745] 36: 450
- Evidence of previous publication by others of same libelous matter inadmissible.  
     [98 Fed. 925] 40: 163

**DAMS.**

- Whether stream navigable, question for jury. [92 Fed. 344] 34: 392

**DEATH.**

See also CARRIERS; MASTER AND SERVANT; NEGLIGENCE; RAILROADS.

By Accident within Policy of Insurance, see INSURANCE.

Of Partner, see PARTNERSHIP.

Of Party to Action, see ABATEMENT AND REVIVAL.

- Presumption of, in less than seven years' absence.  
     [71 Fed. 258; 36 U. S. App. 401] 18: 107
- Of surety on cost bond not relieve estate from costs subsequently accruing.  
     [88 Fed. 573; 60 U. S. App. 133] 32: 8
- Of applicant for insurance, approval of application.  
     [51 Fed. 689; 10 U. S. App. 256] 2: 459
- Of principal, revokes power of attorney to convey land.  
     [90 Fed. 72; 59 U. S. App. 457] 32: 522
- Of client, precludes attorney from using client's money to redeem from tax sale.  
     [86 Fed. 393; 58 U. S. App. 559] 30: 128
- Of person summoned as juror, ground of challenge to array.  
     [55 Fed. 932; 17 U. S. App. 22] 5: 326
- Of stockholder, not set limitation running against action to enforce liability.  
     [97 Fed. 297] 38: 193
- Action for breach of contract for safe carriage abated by death of passenger injured.  
     [97 Fed. 140] 38: 79

**Action for—In general.**

- Right of action in Indian territory. [61 Fed. 757; 27 U. S. App. 96] 10: 41
- Maritime lien against vessel for, enforcement of, in Federal courts.  
     [81 Fed. 633; 42 U. S. App. 546] 26: 500

**DEATH—continued.****—When lies; who liable.**

- Death caused by negligent collision on navigable waters. [61 Fed. 364; 20 U. S. App. 570] 9: 521
- Liability of receiver of railroad. [60 Fed. 176; 23 U. S. App. 167] 8: 544  
[60 Fed. 729; 23 U. S. App. 153] 9: 255
- Liability of city for killing by mob. [62 Fed. 240; 23 U. S. App. 533] 10: 361
- Liability of sheriff for intrusting prisoner to incompetent deputy. [50 Fed. 818; 2 U. S. App. 158] 1: 693

**—Jurisdiction of.**

- Death occurring without state. [93 Fed. 260] 35: 282
- Jurisdiction of Federal court over action for. [59 Fed. 91; 16 U. S. App. 236] 8: 21
- Of admiralty. [70 Fed. 874; 44 U. S. App. 26; 31 L. R. A. 715] 18: 360  
[73 Fed. 883; 43 U. S. App. 190] 20: 86
- Jurisdiction of United States court of admiralty for death of person by negligence on high seas. [100 Fed. 655] 40: 625
- State statute excluding Federal jurisdiction of action for, void. [70 Fed. 113; 34 U. S. App. 261; 30 L. R. A. 336] 17: 1
- Bringing suit for, in district where death occurred though not in state where accident occurred. [93 Fed. 260] 35: 282
- Jurisdiction of action for, under statute, different as to the beneficiary's from the statute of forum. [79 Fed. 934; 51 U. S. App. 111] 25: 247

**—Who may maintain.**

- Statutory provisions, see Note, 1: 33
- Foreign administrator. [59 Fed. 91; 16 U. S. App. 236] 8: 21  
[91 Fed. 845; 63 U. S. App. 688] 34: 103
- Who are next of kin, widower. [57 Fed. 699; 12 U. S. App. 651; 21 L. R. A. 818] 6: 521
- Next of kin, no widow or children. Id.
- Who are heirs at law of intestate. [52 Fed. 371; 10 U. S. App. 339] 3: 129
- Widow, joining all interested, half brother. Id.
- Action by administratrix instead of widow. [93 Fed. 260] 35: 282
- Widower. [57 Fed. 699; 12 U. S. App. 651] 6: 521
- Husband, for loss of deceased wife's services. [58 Fed. 531; 19 U. S. App. 109] 7: 349
- Capacity of husband to sue, challenged for first time on appeal. Id.
- Parents' right to recover for loss of child during minority, although instantaneously killed. [99 Fed. 43] 39: 408

**—Evidence.**

See also *infra*, **Damages.**

- As to deceased's health, vigor, sobriety, and peculiarities. [67 Fed. 659; 33 U. S. App. 147] 14: 609
- Allegation that deceased was killed by defendant's "gross and reckless and wanton negligence." [64 Fed. 823; 24 U. S. App. 489] 12: 618

**—Limitation of action.**

- Limitation, conflict of laws. [51 Fed. 188; 2 U. S. App. 222] 2: 163
- Law as to limitation of actions for death in other state. [64 Fed. 84; 27 U. S. App. 508] 12: 52

**—Damages.**

See also Note, 1: 33

- Action for, to whom damages inure. [78 Fed. 576; 47 U. S. App. 402] 24: 321



**DEATH**—continued.

- Method of determining, mathematical computation.  
[52 Fed. 371; 10 U. S. App. 339] 3: 129
- Carrier's limitation of liability for injury not include statutory liability to others in case of death. [86 Fed. 447; 57 U. S. App. 473] 32: 295
- For death of minor son. [92 Fed. 953] 35: 105
- Loss of dower, contingency. [52 Fed. 371; 10 U. S. App. 339] 3: 129
- Death resulting from wanton assault by employee without authority.  
[91 Fed. 462; 63 U. S. App. 422] 33: 629
- What sufficient proof of pecuniary damage.  
[57 Fed. 536; 15 U. S. App. 193] 6: 474
- Damages not mitigated by receiving insurance. [94 Fed. 745] 36: 450
- Whether deceased suffered mental or bodily pain, question for jury.  
[61 Fed. 592; 22 U. S. App. 187] 9: 646
- Admissibility of evidence as to ages of children.  
[48 Fed. 57; 4 U. S. App. 25] 1: 25
- Admissibility of proof of number of children left by deceased.  
[78 Fed. 576; 47 U. S. App. 402] 24: 321
- Admissibility of proof of nature of injuries causing death, on subject of damages.  
[79 Fed. 262; 49 U. S. App. 112] 24: 563
- Loss of husband's society. [48 Fed. 57; 4 U. S. App. 25] 1: 25
- Instruction as to allowance for loss of society.  
[83 Fed. 82; 48 U. S. App. 757] 27: 457
- Necessity of instructing jury as to basis on which damages computed.  
[98 Fed. 49] 38: 641
- Amounts allowed for drowning of master and cook of schooner.  
[73 Fed. 239; 44 U. S. App. 434; 46 L. R. A. 264] 19: 481
- Amount recoverable for mental and physical suffering for seamen drowned.  
[70 Fed. 270; 33 U. S. App. 207] 17: 90

**—What law governs.**

- On death by negligence on sea within 3 miles from shore.  
[73 Fed. 239; 44 U. S. App. 434; 46 L. R. A. 264] 19: 481
- Law governing parties' rights for negligent death on Lake Michigan.  
[70 Fed. 113; 34 U. S. App. 261; 30 L. R. A. 336] 17: 1
- On waters within state jurisdiction, law governing rights of parties. Id.
- Death occurring out of state. [93 Fed. 260] 35: 282

**DECEDENTS.**

- Administration of Decedent's Estates, see EXECUTORS AND ADMINISTRATORS.
- Evidence as to Transactions with, see WITNESSES.

**DECEIT.**

- See also FRAUD.
- Rescission in Equity for False Representations, see CANCELLATION OF INSTRUMENTS.
- As Ground of Avoiding Policy, see INSURANCE.

**DECLARATION.**

- See also PLEADING.
- As Evidence, see EVIDENCE.
- Effect of Estoppel, see INSURANCE; ESTOPPEL.

**DECREE.**

- See APPEAL AND ERROR; EQUITY; JUDGMENT; SPECIFIC PERFORMANCE.

**DEDICATION.**

- Intent to dedicate inferable from circumstances.  
[90 Fed. 691; 61 U. S. App. 224] 33: 237
- Of street by map, not affected by inaccuracy in delineating land outside of streets. Id.

**DEDICATION**—continued.

- By map, street of full width, notwithstanding irregularities in map. Id.  
 By map, signed, acknowledged, and duly filed and recorded. Id.  
 Of street, by reference in deed to plan showing street. [55 Fed. 443; 3 U. S. App. 592] 5: 183  
 Acceptance of entire street dedicated, by user of part. [90 Fed. 691; 61 U. S. App. 224] 33: 237  
 Acceptance by municipal ordinance declaring streets as shown on plat to be public streets. Id.  
 Railroad company's power to dedicate crossing over right of way granted by Congress. [64 Fed. 506; 29 U. S. App. 81] 12: 246  
 Dedication and acceptance irrevocable. [90 Fed. 691; 61 U. S. App. 224] 33: 237  
 Right of public not divested by adverse possession. Id.  
 Right to open and use part of street dedicated, not divested by nonuser. Id.  
 Effect of abandonment of dedication of burial ground. [59 Fed. 96; 16 U. S. App. 253] 8: 27  
 Estoppel of municipality to sell land dedicated for park. [97 Fed. 234] 38: 453  
 Taxpayer's right to enjoin dedicator's diversion of park to private use. Id.

**DEEDS.**

See also EASEMENTS; ESCROW; VENDOR AND PURCHASER.  
 Cancellation of, see CANCELLATION OF INSTRUMENTS.  
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 In Fraud of Creditors, see FRAUDULENT CONVEYANCES.  
 Covenant in, see COVENANTS.  
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 Of Trust, see CHATTEL MORTGAGES; MORTGAGES.  
 Registration of, see RECORDS.  
 As Color of Title, see ADVERSE POSSESSION.  
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 Estoppel by, see ESTOPPEL.  
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- Names of parties in, see Note, 23: 146  
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 Partition by deed *inter partes* void where one deed invalid. [90 Fed. 72; 59 U. S. App. 457] 32: 522  
 Railroad president's power to bind company in respect to warranties in. [70 Fed. 303; 36 U. S. App. 136] 17: 401  
 Of married woman, curative act as to, see Note, 39: 185  
 Certified copy of record of ancient deed properly acknowledged when made but not when recorded, admissible. [97 Fed. 12] 38: 25

**Requisites and validity.**

- To discharge an actual indebtedness, given under duress. [84 Fed. 735; 52 U. S. App. 272] 28: 520  
 Deeds excepting land previously conveyed, aiding by locating land previously conveyed. [80 Fed. 954; 54 U. S. App. 54] 26: 272  
 Failure of attestation clause to recite delivery. [80 Fed. 862; 52 U. S. App. 194] 26: 198  
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 Estoppel of grantor's devisees to deny sufficiency of. [90 Fed. 337; 62 U. S. App. 173] 33: 84  
 Acknowledgment of act under private signature for land on which taxes unpaid. [74 Fed. 616; 41 U. S. App. 39] 20: 563

**DEEDS—continued.**

Private act of sale registered contrary to law, of no effect against possessor under tax title. Id.

Unregistered deed binds grantor leaving no title to convey.

[90 Fed. 182; 61 U. S. App. 548] 32: 564

By attorney in fact after principal's death void.

[90 Fed. 72; 59 U. S. App. 457] 32: 522

**Grantor's capacity; undue influence.**

Mental capacity of grantor, test of.

[86 Fed. 51; 57 U. S. App. 634] 29: 547

Mental capacity of grantor, decree upholding deed held justified by evidence.

Id.

Evidence held insufficient to show incompetency or undue influence.

[76 Fed. 604; 44 U. S. App. 702] 22: 466

Of person under guardianship as habitual drunkard, void.

[92 Fed. 811] 34: 254

**Delivery.**

Record as evidence of.

[65 Fed. 441; 24 U. S. App. 573] 13: 1

To one of grantees, to be opened after grantor's death.

[70 Fed. 894; 18 U. S. App. 316, 723] 17: 479

**Quitclaim.**

Grantee in, as innocent purchaser without notice.

[51 Fed. 355; 10 U. S. App. 86] 2: 265

[58 Fed. 437; 19 U. S. App. 100] 7: 293

Deed reciting that grantor has "granted, bargained, sold, and quitclaimed," not quitclaimed.

[66 Fed. 631; 30 U. S. App. 761] 13: 659

Of land dedicated for burial ground, estate conveyed.

[59 Fed. 96; 16 U. S. App. 253] 8: 27

**Construction and effect—In general.**

Province of court.

[51 Fed. 932; 2 U. S. App. 310] 2: 546

Manifest intention controls technical rules.

[58 Fed. 437; 19 U. S. App. 100] 7: 293

Discovering intention, surrounding facts and circumstances.

Id.

Of bargain and sale of land granted in aid of military road.

[49 Fed. 496; 7 U. S. App. 128] 1: 330

[51 Fed. 629; 7 U. S. App. 297] 2: 419

Effect of deed of successor of sheriff who made judicial sale.

[82 Fed. 89; 48 U. S. App. 452] 27: 63

Effect of, as dedication of street.

[55 Fed. 443; 3 U. S. App. 592] 5: 183

Effect of, as execution of testamentary power of attorneys.

[62 Fed. 708; 23 U. S. App. 414] 10: 602

Assumption by grantee of grantor's notes, rights of parties under.

[55 Fed. 18; 13 U. S. App. 215] 5: 22

Certificate of marriage, effect as conveyance.

[54 Fed. 800; 2 U. S. App. 555] 4: 622

Quitclaim, condition subsequent or trust.

[59 Fed. 96; 16 U. S. App. 253] 8: 27

Condition in deed to railroad company for maintenance of its "road through" tract conveyed.

[98 Fed. 281] 39: 86

Possession by grantee not adverse while land remains vacant and nothing done to indicate intention not to comply with condition.

Id.

Grantor no right to recover for breach of condition subsequent rendered impossible by washing away or submerging of land.

Id.

Commencement of suit in ejectment by grantor after condition broken, as demand of possession.

Id.

Act of law preventing performance. [59 Fed. 96; 16 U. S. App. 253] 8: 27

**DEEDS—continued.****—Rights, title, and estate passing.**

- What estate conveyed by. [86 Fed. 235; 57 U. S. App. 526] 30: 1  
 Life estate only to first grantee. [96 Fed. 657] 37: 552  
 Vested interest in remainder. Id.  
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 Mines of gold on land not conveyed by deed of right to enter for mining purposes. [93 Fed. 1] 35: 177  
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 Joint mortgage by husband and wife authorized by provision in deed to them, authorizing conveyance by their joint deed. [99 Fed. 18] 40: 47  
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**—Description; land conveyed.**

- Of mining claim. [57 Fed. 865; 12 U. S. App. 676] 6: 621  
 By reference to plat showing lots bounded by vacated street. [71 Fed. 626; 37 U. S. App. 539] 19: 99  
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 Erroneously describing land as part of a certain tract, effect of. [79 Fed. 608; 41 U. S. App. 755] 25: 126  
 Deeds held inoperative to convey any particular land. [80 Fed. 954; 54 U. S. App. 54] 26: 272  
 Bounding on street, river, or other monument, conveys to center line. [71 Fed. 626; 37 U. S. App. 539] 19: 99  
 Plat annexed to grant cannot control if grant certain and unambiguous. [90 Fed. 238; 61 U. S. App. 647] 33: 47

**—Deed as a mortgage.**

- Laches in respect to. [51 Fed. 865; 7 U. S. App. 233] 2: 523  
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**DEFAMATION.**

See LIBEL AND SLANDER.

**DEFAULT.**

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**DEFENSES.**

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[51 Fed. 501; 3 U. S. App. 199] 2: 490

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**DELIVERY.**

By Carriers, see CARRIERS.

Of Deed, see DEEDS.

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**DEMAND.**

For Payment of Bill or Note, see BILLS AND NOTES.

**DEMURRAGE.**

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**DEMURRER.**

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**DEPORTATION.**

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**DEPOSITARIES.**

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**DEPOSITIONS.****Right to take.**

Federal courts following state court practice as to, see Note, 27: 392

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[58 Fed. 723; 19 U. S. App. 266] 7: 444

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[72 Fed. 200; 25 U. S. App. 636] 18: 504

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[55 Fed. 526; 13 U. S. App. 211] 5: 208

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Taxation of expense of journey to take. [52 Fed. 390; 8 U. S. App. 129] 3: 155

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[59 Fed. 70; 19 U. S. App. 307] 8: 1

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[72 Fed. 968; 41 U. S. App. 54] 19: 259

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[82 Fed. 961; 48 U. S. App. 633] 27: 274

**Suppression of.**

On appeal in admiralty, rejection of. [54 Fed. 188; 7 U. S. App. 660] 4: 273

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[57 Fed. 398; 14 U. S. App. 150] 5: 165

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[50 Fed. 104; 1 U. S. App. 126] 1: 487

**DEPOSITIONS—continued.**

- Taken during term at which case might have been tried.  
     [56 Fed. 288; 15 U. S. App. 92] 5: 510  
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     [50 Fed. 104; 1 U. S. App. 126] 1: 487

**Admission, use, and effect of; objections to.**

- Permitting entire deposition read after other party reads part.  
     [67 Fed. 451; 34 U. S. App. 134] 14: 464  
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     [57 Fed. 490; 13 U. S. App. 472] 6: 459  
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     [72 Fed. 200; 25 U. S. App. 636] 18: 504  
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**DEPOSITS IN COURT.**

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     [88 Fed. 237; 60 U. S. App. 25] 31: 511

**DESCENT AND DISTRIBUTION.**

- Escheat of Lands, see ESCHEAT.  
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- Inheritance of mining claim by or from alien.  
     [51 Fed. 338; 10 U. S. App. 1] 2: 252  
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     [68 Fed. 43; 20 U. S. App. 651; 33 L. R. A. 759] 15: 201  
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     [61 Fed. 865; 22 U. S. App. 393] 10: 129  
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     [56 Fed. 707; 13 U. S. App. 495] 6: 92  
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     [60 Fed. 48; 23 U. S. App. 214] 8: 448  
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     [90 Fed. 72; 59 U. S. App. 457] 32: 522  
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**DESCENT AND DISTRIBUTION—continued.**

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[60 Fed. 676; 13 U. S. App. 707] 9: 204

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Minor may be tried for, though enlisting without parent's or guardian's consent. [87 Fed. 318; 59 U. S. App. 52] 30: 664

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**DISCOVERY AND INSPECTION.**

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Right to compel plaintiff to submit to physical examination.

[80 Fed. 278; 53 U. S. App. 22] 25: 413

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[87 Fed. 1005; 57 U. S. App. 165] 31: 350

Prayer for, not ground of equity jurisdiction when remedy at law adequate.

[59 Fed. 913; 8 U. S. App. 496] 8: 365

Power of equity to enforce, statutes permitting adverse parties to be called as witnesses.

[85 Fed. 55; 56 U. S. App. 363] 29: 14

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Id.

Bill for, by holder of matured semi-tontine policy.

[71 Fed. 570; 39 U. S. App. 34] 18: 251

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Id.

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[82 Fed. 813; 53 U. S. App. 556] 27: 165

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**DISMISSAL.**

Of Appeal, see APPEAL AND ERROR.

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Dismissal for want of prosecution, not direction of verdict for defendant, proper, where plaintiff fails to appear. [98 Fed. 811] 39: 308

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[64 Fed. 287; 28 U. S. App. 123] 12: 104

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[67 Fed. 837; 21 U. S. App. 638] 15: 33

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Id.

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[67 Fed. 947; 32 U. S. App. 409] 15: 95

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[67 Fed. 413; 32 U. S. App. 227] 14: 458

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[48 Fed. 62; 4 U. S. App. 49] 1: 37

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[67 Fed. 837; 21 U. S. App. 638] 15: 33

Dismissal of unnecessary parties, to perfect jurisdiction.

[56 Fed. 545; 15 U. S. App. 84] 6: 10

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[59 Fed. 836; 19 U. S. App. 407] 8: 305

**Grounds.**

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What delay justifies dismissal for want of prosecution.

[94 Fed. 312] 36: 263

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Id.

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Action commenced pending accounting of rents and profits.

[67 Fed. 833; 33 U. S. App. 91] 16: 86

Failure to paragraph causes separately.

[58 Fed. 534; 19 U. S. App. 157] 7: 351

Where complaint shows nonexistence of requisite diverse citizenship.

[66 Fed. 371; 68 Fed. 729; 30 U. S. App. 8] 13: 518

Case in Federal court where it appears on trial that Federal question not involved. [72 Fed. 873; 36 U. S. App. 480] 19: 212

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[56 Fed. 76; 5 U. S. App. 423] 5: 421



**DISMISSAL—continued.**

- Refusal to dismiss bill generally for misjoinder after voluntary dismissal as to some defendant. [85 Fed. 662; 50 U. S. App. 314] 29: 386
- Of equity suit, after abandonment by commencing ejectment suit. [90 Fed. 690; 62 U. S. App. 435] 33: 236
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- Sua sponte*, of bill for receiver as collusive. [80 Fed. 972; 53 U. S. App. 366] 26: 282
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- Of proceeding to condemn right of way for want of prosecution. [94 Fed. 312] 36: 263
- Suit on expired patent, want of equity. [69 Fed. 94; 34 U. S. App. 90] 16: 154
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- Plaintiff's right to dismiss. [59 Fed. 989; 19 U. S. App. 440] 8: 437
- By plaintiff in replevin. [76 Fed. 717; 40 U. S. App. 763] 22: 511
- Of creditors' suit, by agreement between parties after other creditors have proved claims. [96 Fed. 271] 37: 471
- Termination of right by submission, what constitutes submission. [79 Fed. 575; 49 U. S. App. 122] 25: 94
- Interpleader's right to be dismissed waiver by filing answer. [59 Fed. 836; 19 U. S. App. 407] 8: 305
- By plaintiff, after reference to master. [69 Fed. 666; 21 U. S. App. 627] 16: 367

**Without prejudice.**

- Dismissing creditor's bill by simple-contract creditor "without prejudice." [94 Fed. 728] 36: 443
- Dismissal without prejudice of injunction suit against elevated railroad, when proper. [86 Fed. 189; 57 U. S. App. 724] 29: 655
- When without prejudice. [60 Fed. 137; 23 U. S. App. 253] 8: 519
- Without prejudice against wishes of parties, improper where full hearing had. [99 Fed. 114] 39: 431
- Of bill filed by corporation without prejudice on ground of complainant's want of authority, not bar second suit. [98 Fed. 657] 39: 211
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**DISSOLUTION.**

- Of Attachment, see ATTACHMENT.
- Of Corporation, see CORPORATIONS.
- Of Injunction, see INJUNCTION.
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- Of Municipal Corporation, see MUNICIPAL CORPORATIONS.

**DISTILLED SPIRITS.**

- Soakage of barrel of spirits liable to internal revenue tax.  
[86 Fed. 913; 57 U. S. App. 407] 30: 483
- Compulsory withdrawal of, from warehouse before expiration of bond.  
[49 Fed. 555; 6 U. S. App. 42] 1: 365
- Abatement of tax on, when lost. Id.
- No remission of taxes on, when destroyed in transit from distillery to bonded warehouse.  
[88 Fed. 638; 60 U. S. App. 151] 32: 74
- Forfeiture of mortgaged team and wagon used without mortgagee's consent to convey unstamped whisky.  
[90 Fed. 479] 37: 518

**DISTRESS.**

For Rent, see LANDLORD AND TENANT.

**DISTRIBUTION.**

- Of Intestate's Estate, see DESCENT AND DISTRIBUTION.
- Of Proceeds of Sale on Execution, see EXECUTION.
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**DISTRICT AND PROSECUTING ATTORNEYS.****Powers and Liability.**

- Right to inspect papers in hands of receiver in aid of prosecution.  
[50 Fed. 860; 5 U. S. App. 49] 2: 60
- Liability of, in action for false imprisonment, in maliciously procuring lawful indictment and warrant of extradition.  
[86 Fed. 405; 57 U. S. App. 145] 30: 140

**Fees and compensation—In general.**

- Fees of, in case to which United States not party.  
[73 Fed. 149; 44 U. S. App. 401] 19: 419
- Per diem* fees for time spent in investigating cases before arrest.  
[70 Fed. 890; 35 U. S. App. 799] 17: 475
- Interest on accounts after allowance.  
[51 Fed. 671; 10 U. S. App. 243] 2: 411
- Right to all fees and emoluments not exceeding \$6,000.  
[87 Fed. 698; 57 U. S. App. 242] 31: 197
- For services in investigating violations of customs laws.  
[87 Fed. 699; 57 U. S. App. 747] 31: 200
- For examinations in revenue cases, no proceedings instituted.  
[50 Fed. 749; 4 U. S. App. 360] 1: 653
- Ruling of secretary and practice of department not binding on courts. Id.

**Per diem fees; attendance before court or commissioner.**

- For each day of term court opened for business or business transacted.  
[87 Fed. 699; 57 U. S. App. 747] 31: 200
- For Sundays or legal holidays during term.  
[50 Fed. 743; 4 U. S. App. 386] 1: 648
- Claim for attendance in court, claimant not in actual attendance.  
[76 Fed. 214; 46 U. S. App. 133] 22: 135
- For attendance before commissioner when represented by counsel.  
[70 Fed. 890; 35 U. S. App. 799] 17: 475
- For appearing before commissioner to discontinue compromised cases. Id.
- Two or more charges for attendance before same commissioner in different cases on same day.  
[76 Fed. 214; 46 U. S. App. 133] 22: 135
- Per diem* and mileage for preliminary examination before accusation. Id.
- For examination before commissioner, of person charged with crime.  
[50 Fed. 743; 4 U. S. App. 386] 1: 648

**—Extra or double compensation.**

- Conditions precedent to recovery of.  
[76 Fed. 359; 40 U. S. App. 312] 22: 223

**DISTRICT AND PROSECUTING ATTORNEYS—continued.**

In proceedings against United States for damages by river improvements.	[66 Fed. 695; 24 U. S. App. 632]	14: 65
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Unnecessary expenditure for printing and stenographer.	[76 Fed. 214; 46 U. S. App. 133]	22: 135
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Entitled to, out of fees and emoluments of office.	[70 Fed. 890; 35 U. S. App. 799]	17: 475

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On preliminary examination before accusation.	[76 Fed. 214; 46 U. S. App. 133]	22: 135
Not included, in determining whether maximum compensation reached.	[73 Fed. 149; 44 U. S. App. 401]	19: 419
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Going to and returning from home during adjournment over Sunday.	[51 Fed. 671; 10 U. S. App. 243]	2: 411
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From abode to official headquarters, examination.	Id.	
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**DISTRICT COURTS.**

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**DITCHES.**

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[64 Fed. 510; 29 U. S. App. 155; 30 L. R. A. 265] 12: 250

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**DIVIDENDS.**

Recovery by bank receiver of dividends paid after insolvency.

[96 Fed. 279] 37: 479

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[59 Fed. 372; 16 U. S. App. 465] 8: 155

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[86 Fed. 505; 58 U. S. App. 648] 30: 223

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[71 Fed. 60; 36 U. S. App. 361] 17: 592

Running of limitations against bank receiver's right to recover back.

Id.

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Id.

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- No jurisdiction to award money judgment for, against defendant not served.  
[91 Fed. 60; 50 U. S. App. 484; 43 L. R. A. 618] 33: 328
- Right to deny jurisdiction to open decree without notice and award alimony,  
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- Divorced wife's right to recover community property in action against former  
husband's estate. [94 Fed. 283] 36: 248
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creased value of husband's separate property. Id.
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- Effect of subsequent divorce on separation agreement, see Note, 38: 616

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- Effect of change of domicile on the question of diverse citizenship, see  
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- Of corporation, at place where officers elected and financial operations con-  
ducted. [86 Fed. 725; 57 U. S. App. 286] 32: 31
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- What estate subject to dower, see Note, 3: 316
- How inchoate right extinguished, see Note, 3: 316
- In location of mining claim. [52 Fed. 859; 7 U. S. App. 393] 3: 312  
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- Abolition, existing rights, previous conveyance.  
[54 Fed. 209; 7 U. S. App. 494] 4: 290
- Inchoate right of, may be taken away by legislature. Id.
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[54 Fed. 209; 7 U. S. App. 494] 4: 290
- In partnership land, precedents of partnership debts.  
[52 Fed. 1; 2 U. S. App. 254] 2: 587
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- Widow of nonresident owner no transferable interest in land.  
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**DRAFTS.**

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For part of fund as equitable assignment.

[64 Fed. 615; 24 U. S. App. 413] 12: 331

**DRAINS AND SEWERS.**

Property transferred from drainage commissioner to New Orleans, use and dis-  
position of. [60 Fed. 127; 13 U. S. App. 673] 8: 516

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- Setting out owner's name in drainage commissioner's report. [93 Fed. 316] 35: 314
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- Property of persons procuring act for forming drainage district, not liable to bondholders after act declared invalid. [95 Fed. 883] 37: 309
- Mandamus to compel payment of judgment against drainage district, necessity of precedent demand. [85 Fed. 928; 57 U. S. App. 416] 29: 578
- When claim founded on equitable rather than legal right. Id.
- Enjoining proceedings for construction of, as to person not notified. [93 Fed. 316] 35: 314
- Sufficient allegation that no notice of proceedings given in bill to enjoin construction of. Id.

**DRAWBACK.**

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**DRAWBRIDGE.**

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**DRUNKARDS.**

- Contract of person *non compos mentis* under guardianship, see Note, 34: 264
- Deed of person under guardianship as habitual drunkard, void. [92 Fed. 811] 34: 254
- Notice to guardian or family of application for restoration to rights. Id.
- Habitual drunkard under guardianship may personally institute inquiry as to restoration to sound mind. Id.
- Right of one discharged from guardianship as drunkard on own application to impeach judgment for want of notice to guardian. Id.
- Drunkenness of passenger not conclusive evidence of contributory negligence. [97 Fed. 891] 38: 536
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**DUE PROCESS OF LAW.**

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**DURESS.**

- Effect on validity of deed made to discharge actual indebtedness. [84 Fed. 735; 52 U. S. App. 272] 28: 520
- Laches in seeking to avoid deed for. Id.
- Necessity of restoring consideration before treating contract as void for. [66 Fed. 356; 26 U. S. App. 592] 13: 510

**What constitutes.**

- Threat of lawful arrest. [62 Fed. 107; 27 U. S. App. 75] 10: 290
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**DUTIES.**

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**EASEMENTS.**

- See also DEDICATION.
- As defect in title, see Note, 40: 607
- Destruction of, by constructing railroad over, lien for. [90 Fed. 593; 61 U. S. App. 714] 33: 189
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**EASEMENTS—continued.**

Dedication of street by reference in deed.

[55 Fed. 443; 3 U. S. App. 592] 5: 183

Creation by prescription, use originating under invalid contract.

[77 Fed. 726; 41 U. S. App. 624; 37 L. R. A. 94] 23: 424

Railway right of way in public street as.

[77 Fed. 501; 47 U. S. App. 74, 246] 23: 252

Secured by contract, not affected by discontinuance of highway.

[90 Fed. 593; 61 U. S. App. 714] 33: 189

To maintain telegraph line on railroad right of way granted by mortgagor, ceases on mortgagee's entry.

[90 Fed. 379; 61 U. S. App. 741] 33: 113

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[97 Fed. 819] 38: 498

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[94 Fed. 613] 36: 418

**EIGHT-HOUR LAW.**

Right of government employees to extra compensation for working more than eight hours a day.

[84 Fed. 933; 56 U. S. App. 262] 28: 570

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[85 Fed. 613; 52 U. S. App. 504] 29: 379

**EJECTION.**

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**EJECTMENT.**

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For Mining Claim, see MINES AND MINERALS.

As adequate remedy at law.

[58 Fed. 470; 8 U. S. App. 436] 7: 319

[49 Fed. 529; 7 U. S. App. 33] 1: 345

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[60 Fed. 316; 19 U. S. App. 576] 8: 635

Notice to show why writ shall not issue, due process.

[56 Fed. 12; 12 U. S. App. 305] 5: 403

Issuance of writ by clerk of court in Indian nation, faith and credit. Id.

Against United States agent in charge of public improvement, jurisdiction.

[57 Fed. 803; 16 U. S. App. 152] 6: 585

Purchaser from plaintiff pending suit chargeable with notice of unrecorded deed.

[79 Fed. 736; 49 U. S. App. 174] 25: 181

**When lies.**

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[62 Fed. 720; 23 U. S. App. 570] 10: 614

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[75 Fed. 379; 44 U. S. App. 566] 21: 409

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[87 Fed. 648; 59 U. S. App. 487] 31: 183

**Title to support.**

Plaintiff must recover on strength of own title, not on weakness of adversary's.

[98 Fed. 242] 39: 47

By adverse possession.

[52 Fed. 268; 8 U. S. App. 149] 3: 76

Effect of adverse possession, extent of.

[56 Fed. 542; 15 U. S. App. 129] 6: 3

Legal without equitable title.

[76 Fed. 721; 40 U. S. App. 427] 23: 541

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[49 Fed. 47; 7 U. S. App. 71] 1: 155

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[56 Fed. 542; 15 U. S. App. 129] 6: 3

Necessity of possession by one of grantors in chain, payment of taxes.

[51 Fed. 932; 2 U. S. App. 310] 2: 546

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[52 Fed. 268; 8 U. S. App. 149] 3: 76

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[53 Fed. 58; 3 U. S. App. 231] 3: 426

**EJECTMENT—continued.**

- For millsite mining claim, sufficiency of possession to support.  
[86 Fed. 90; 56 U. S. App. 666] 29: 591
- Land sold under decree without jurisdiction.  
[58 Fed. 470; 8 U. S. App. 436] 7: 319
- Land claimed under canceled grant from government.  
[91 Fed. 483; 63 U. S. App. 371] 33: 648

**Pleading and evidence.**

- Burden of proving surrender of lease, shifting.  
[53 Fed. 58; 3 U. S. App. 231] 3: 426
- Unnecessary to plead specific defenses to title not disclosed in complaint.  
[79 Fed. 736; 49 U. S. App. 174] 25: 181
- Admissibility of bond for title, sufficiency of description in.  
[80 Fed. 228; 42 U. S. App. 466] 25: 382
- Not limited to precise amount specified in declaration.  
[58 Fed. 293; 19 U. S. App. 18] 7: 233
- As to common grantor, admission in answer.  
[59 Fed. 977; 15 U. S. App. 348] 8: 426
- Estoppel *in pais* available under general issue or denial.  
[70 Fed. 561; 37 U. S. App. 436] 17: 277
- Admissibility of receiver's certificate to plaintiff for purchase money.  
[86 Fed. 90; 56 U. S. App. 666] 29: 591
- Admissibility of testimony to show that plaintiff has only legal and not equitable title.  
[76 Fed. 721; 40 U. S. App. 427] 23: 541
- Evidence that defendant's grantor uniformly considered owner to show nature of plaintiff's possession.  
[92 Fed. 949] 35: 100
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[78 Fed. 862; 41 U. S. App. 745] 24: 374

**Defenses—In general.**

- Inconsistent defenses.  
[50 Fed. 888; 4 U. S. App. 290] 2: 67
- In action to recover land included in railroad grant.  
[58 Fed. 850; 15 U. S. App. 279] 7: 518
- Valid grant from foreign government in suit to recover land claimed under patent from United States.  
[93 Fed. 899] 35: 646
- That land claimed under patent from government was reserved from sale or other disposition. Id.
- That officer making grant of patent from government unauthorized. Id.
- That plaintiff intended to pay for the land with depreciated state scrip.  
[65 Fed. 731; 25 U. S. App. 124] 13: 160

**—Adverse possession.**

- See also ADVERSE POSSESSION.
- Instruction as to time necessary to bar right of entry.  
[52 Fed. 838; 8 U. S. App. 229] 3: 294
- Modification of request as to adverse possession between cotenants. Id.
- Adverse possession, evidence to sustain.  
[56 Fed. 447; 12 U. S. App. 421; 5: 548]

**—Equitable title; purchaser; estoppel.**

- Pleading and proving equitable title, effect of state statutes as to, in Federal court.  
[82 Fed. 153; 49 U. S. App. 486] 27: 95
- Equitable, purchasers at execution sale, fraudulent conveyance.  
[49 Fed. 506; 4 U. S. App. 274] 1: 339
- Equitable title based on legal right. [82 Fed. 153; 49 U. S. App. 486] 27: 95
- Possession of purchaser who has complied with contract. Id.
- Contract of sale and payment of purchase money available to purchaser as estoppel.  
[71 Fed. 127; 36 U. S. App. 307] 18: 1
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[65 Fed. 742; 31 U. S. App. 30] 13: 101

**EJECTMENT—continued.**

Admission of tenancy, estoppel to deny plaintiff's title.  
[52 Fed. 268; 8 U. S. App. 149] 3: 76

**—Outstanding title.**

Title in third person. [79 Fed. 736; 49 U. S. App. 174] 25: 181  
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**Questions for court or jury.**

Form and substance of issues to be submitted to jury.  
[80 Fed. 228; 42 U. S. App. 466] 25: 382  
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Defendant's possession where mining shaft dug, timber cut, and fence and cabin built. [69 Fed. 297; 25 U. S. App. 368] 16: 227  
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**Verdict and judgment—In general.**

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[58 Fed. 293; 19 U. S. App. 18] 7: 233  
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[68 Fed. 336; 25 U. S. App. 345] 15: 466  
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Mining vein, sufficiency, accuracy. [50 Fed. 888; 4 U. S. App. 290] 2: 67  
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[58 Fed. 521; 19 U. S. App. 190] 7: 340

**Improvements.**

By occupying claimants, sale and distribution.  
[52 Fed. 439; 10 U. S. App. 208; 18 L. R. A. 266] 3: 176  
Constitutionality of occupying claimant's act. Id.  
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Mode of enforcing. Id.  
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**Writ of estoppelment.**

Action to recover damages brought directly on bond for dissolution of writ of estoppelment in. [89 Fed. 474; 60 U. S. App. 423] 32: 255  
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**ELECTION OF REMEDIES.**

Between appeal to circuit court of appeals and Supreme Court.  
[50 Fed. 260; 7 U. S. App. 194] 1: 510  
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**ELECTION OF REMEDIES—continued.**

- Suing at law on notes as waiver of right to foreclose equitable mortgage.  
[72 Fed. 115; 30 U. S. App. 580] 18: 451
- Attempting to enforce judgment on notes as forfeiture of right to foreclose. *Id.*  
By filing cross bill asking foreclosure by court in suit to restrain under power of sale in mortgage. [99 Fed. 18] 40: 47
- Filing claims with assignee for creditors in ignorance of fraudulent transactions no bar to subsequent proceedings in bankruptcy.  
[94 Fed. 630] 36: 430
- Right to recover property fraudulently conveyed after receiving the consideration paid by the fraudulent grantee.  
[72 Fed. 301; 36 U. S. App. 419] 18: 573
- Action against bank directors for breach of implied trust in bank property in either law or equity. [94 Fed. 582] 36: 402
- Election to sue nominal corporation, enforcing judgment against real corporation. [54 Fed. 50; 8 U. S. App. 340] 4: 184
- Libel not proper remedy for obtaining possession of logs cut from government lands. [92 Fed. 881] 35: 75

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- By pledgee upon purchase by pledgee of pledged property.  
[85 Fed. 539; 56 U. S. App. 556] 29: 333
- When party has broken contract and committed a fraud.  
[84 Fed. 131; 55 U. S. App. 205] 28: 305
- Waiving tort and suing for value of ties used by tortfeasor.  
[91 Fed. 349; 63 U. S. App. 377] 33: 554
- Waiving tort and suing in assumpsit for stone wrongfully quarried and converted. [99 Fed. 683] 40: 72
- Effect on period of limitation. [84 Fed. 131; 55 U. S. App. 205] 28: 305
- By passenger wrongfully ejected, contract or tort.  
[57 Fed. 822; 18 U. S. App. 279] 6: 597

**Relief from election.**

- Mistaken election. [74 Fed. 395; 46 U. S. App. 115; 33 L. R. A. 739] 20: 468
- To recover deposit when bank insolvent. *Id.*

**ELECTIONS.**

- Of Corporate Officers, see CORPORATIONS.
- Of School Officers, see SCHOOLS AND SCHOOL DISTRICTS.
- Submission of Question of Issue of Municipal Bonds, see COUNTIES; MUNICIPAL CORPORATIONS.
- Registration of voters on question as to issuance of railroad aid bonds.  
[74 Fed. 528; 41 U. S. App. 68] 20: 635
- Vote of electors not necessary condition precedent to issuance of refunding bonds. [97 Fed. 435] 38: 250
- Enjoining county superintendent of registration from performing duties under unconstitutional law.  
[69 Fed. 552; 25 U. S. App. 383; 30 L. R. A. 90] 16: 516

**ELECTRICAL USES AND APPLIANCES.**

See ELECTRICITY.

**ELECTRICITY.**

- When preliminary injunction will issue to restrain removal of poles and wires.  
[79 Fed. 715; 49 U. S. App. 266] 25: 161
- Duty as to insulation, toward employee of other company.  
[78 Fed. 74; 39 U. S. App. 416; 37 L. R. A. 725] 23: 649
- Permitting telegraph wire to break and fall on electric light wire.  
[64 Fed. 287; 28 U. S. App. 123] 12: 104
- Evidence of condition of telegraph wire nine months after accident. *Id.*

**ELECTRICITY**—continued.

- Misleading instruction as to electric light company's duty to inspect poles.  
[88 Fed. 226; 60 U. S. App. 104] 31: 499
- Contributory negligence in walking diagonally across street when struck by falling electric light pole and wires. Id.
- Failure to notify telegraph company of wire sagging close to surface of street.  
[75 Fed. 102; 44 U. S. App. 517] 21: 246
- Notice of defect in electric light pole imputed to corporation.  
[88 Fed. 226; 60 U. S. App. 104] 31: 499

**ELECTRIC LIGHTS.**

Injury by Falling Pole, see **ELECTRICITY**.

**ELECTRIC RAILROADS.**

See also **STREET RAILROADS**.

- Time for filing lien for labor and materials furnished.  
[86 Fed. 725; 57 U. S. App. 286] 32: 31
- Mechanic's lien for labor and materials furnished for. Id.

**ELEVATED RAILROADS.**

- Injunction at instance of abutting owner against construction.  
[80 Fed. 601; 53 U. S. App. 284] 26: 21
- [86 Fed. 189; 57 U. S. App. 724] 29: 655

**ELEVATORS.**

- Running, after being warned to stop. [68 Fed. 858; 30 U. S. App. 379] 16: 36
- Carrier by, bound to exercise highest degree of care, not insurer.  
[62 Fed. 139; 22 U. S. App. 325; 25 L. R. A. 33] 10: 306
- Extent of rule requiring highest degree of care. Id.
- Duty to give passenger opportunity to obtain balance. Id.

**EMBEZZLEMENT.**

- By bank officer, indictment for. [91 Fed. 494; 62 U. S. App. 550] 33: 652
- Sufficiency of indictment of bank officer for. [97 Fed. 208] 38: 115
- By postmaster issuing money orders without receiving money therefor, though no intent to defraud government. [92 Fed. 355] 34: 403
- Affidavit charging, necessity of describing precise character of bailment.  
[79 Fed. 616; 49 U. S. App. 163] 25: 133

**EMINENT DOMAIN.**

- Acquisition of Right of Way for Telegraph or Telephone, see **TELEGRAPHS AND TELEPHONES**.
- Condemnation proceedings as defects in title, see Note, 40: 607, 612
- Equity jurisdiction of proceeding to condemn easement of way for telegraph line over railroad right of way. [90 Fed. 379; 61 U. S. App. 741] 33: 113
- Power, condition against compensation; voluntary contributions.  
[51 Fed. 501; 3 U. S. App. 199] 2: 490
- Power to condemn, excavation of Petty's island. Id.
- What constitutes taking, direct injury to, or destruction of private right of way by constructing railroad over. [90 Fed. 593; 61 U. S. App. 714] 33: 189
- What may be taken, old and partially ruined tunnel in neighboring claim for mining tunnel. [83 Fed. 45; 48 U. S. App. 526] 27: 189
- Right of election to proceed in state or Federal court to condemn land for military purposes. [81 Fed. 704; 42 U. S. App. 539] 26: 600
- Report on conflicting evidence negating damage not disturbed on appeal.  
[83 Fed. 45; 48 U. S. App. 526] 27: 399
- Proceedings in suit so as to authorize dismissal for want of prosecution.  
[94 Fed. 312] 36: 263
- Dismissal without prejudice of abutting owners' injunction suit against elevated railroad, when proper. [86 Fed. 189; 57 U. S. App. 724] 29: 655
- Enjoining petitioning corporation from entering land until termination of condemnation suit. [87 Fed. 512; 59 U. S. App. 155] 31: 99

**EMINENT DOMAIN—CONTINUED.**

- Remedy of abutting owner for illegal construction of elevated railroad in street. [80 Fed. 601; 53 U. S. App. 284] 26: 21
- When injunction against operation of elevated road not granted at suit of abutting owner. [86 Fed. 189; 57 U. S. App. 724] 29: 655
- Collateral attack on judgment. [60 Fed. 316; 19 U. S. App. 576] 8: 635
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**Compensation.**

- Consequential and indirect damages, see Note, 16: 468
- General benefits not considered in fixing. [94 Fed. 613] 30: 418
- To abutting owner for special inconvenience from discontinuance of street. [98 Fed. 830] 39: 318
- Of adjoining owner for earth taken to repair levee, although unasserted servitude therefor exists. Id.
- For permanently flooding land not taken. [69 Fed. 320; 37 U. S. App. 234] 16: 460
- For anticipated increase of danger from fire during construction of lock and dam. Id.
- City not liable for increase of damages from smoke and cinders because of elevation of railroad track. [98 Fed. 830] 39: 318
- Method of determining. [69 Fed. 320; 37 U. S. App. 234] 16: 460
- Value determined as of time when oath of commissioners of appraisal filed. [98 Fed. 789] 39: 290
- Owner entitled to market value of property at time of taking, to be determined by terms of statute. Id.
- For anticipated change in current of stream. [69 Fed. 320; 37 U. S. App. 234] 16: 460
- For temporary flooding of land not taken. Id.
- No allowance for consequential damages. Id.
- Owner at time of taking entitled to. [87 Fed. 648; 59 U. S. App. 487] 31: 183
- Condemnation for railroad right of way, evidence of value. [61 Fed. 392; 15 U. S. App. 472] 9: 548
- Enforcing payment, injunction, bond. [49 Fed. 114; 4 U. S. App. 77] 1: 183
- [49 Fed. 119; 4 U. S. App. 93] 1: 192

**EMPLOYEES.**

- In General, see MASTER AND SERVANT.
- Bond for Fidelity of, see INSURANCE.

**ENTRY.**

- Of Public Land, see PUBLIC LANDS.
- Writ of, see EJECTMENT.

**EQUITABLE ESTOPPEL.**

- See ESTOPPEL.

**EQUITABLE LIENS.**

- See LIENS.

**EQUITY.**

- Costs in, see COSTS.
- Equitable Jurisdiction of Federal Courts under State Laws, see COURTS.
- Enforcement of Obligations of Pacific Railroad Companies, see TELEGRAPHS AND TELEPHONES.
- See also CREDITORS' SUIT; DISCOVERY; DURESS; FRAUDULENT CONVEYANCES; INJUNCTION; JUDICIAL SALES; MORTGAGES; PARTITION; PARTNERSHIP; RECEIVERS; SPECIFIC PERFORMANCE; TRUSTS.
- Writ of Assistance, see ASSISTANCE, WRIT OF.
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**EQUITY**—continued.

- Foreclosure of Mechanics' Liens, see **MECHANICS' LIENS**.  
 Suits to Quiet Title, see **QUIETING TITLE**.  
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 Waiver of Objection as to Jurisdiction, see **APPEAL AND ERROR**.  
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**Commencement of suit; process.**

- Commencement of suit in, what constitutes.  
     [85 Fed. 827; 56 U. S. App. 655] 29: 431  
 Suing out process and bona fide attempt to serve it. Id.  
 Issuance of subpoena to be served outside territorial jurisdiction. Id.  
 Suit by United States to annul patents. Id.  
 Waiver of subpoena by appearing and stipulating to answer to merits.  
     [79 Fed. 179; 48 U. S. App. 255] 24: 512  
 Substituted service in ancillary proceedings, validity of.  
     [79 Fed. 520; 50 U. S. App. 4] 25: 48  
 When injunction proceedings ancillary, manner of serving process. Id.

**Jurisdiction**—**In general.**

- Compelling Issue of Patent, see **PATENTS**.  
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 Urging want of equity jurisdiction for first time on appeal.  
     [80 Fed. 766; 47 U. S. App. 91] 26: 146  
 Defendant's right to trial in equity where object and nature of remedy sought equitable.  
     [89 Fed. 832; 60 U. S. App. 431] 32: 368  
 State legislation limiting equity jurisdiction of Federal courts.  
     [72 Fed. 112; 30 U. S. App. 635] 18: 464  
     [74 Fed. 23; 46 U. S. App. 103] 20: 274  
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     [70 Fed. 12; 36 U. S. App. 75] 16: 593  
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     [50 Fed. 860; 5 U. S. App. 49] 2: 60  
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     [69 Fed. 852; 25 U. S. App. 383; 30 L. R. A. 90] 16: 516  
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     [63 Fed. 204; 27 U. S. App. 291] 11: 135  
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     [70 Fed. 179; 36 U. S. App. 110] 17: 387  
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     [71 Fed. 618; 30 U. S. App. 612] 18: 280  
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     [85 Fed. 246; 42 U. S. App. 742] 29: 137  
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     [65 Fed. 848; 21 U. S. App. 639] 13: 171  
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     [68 Fed. 730; 37 U. S. App. 141] 15: 632  
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     [69 Fed. 867; 34 U. S. App. 169] 16: 530  
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     [68 Fed. 19; 46 U. S. App. 530] 15: 184  
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     [66 Fed. 799; 31 U. S. App. 244] 14: 97  
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- To relieve against mistake of foreman in announcing verdict  
[76 Fed. 479; 42 U. S. App. 123] 22: 283
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Id.
- Equitable liens, enforcement of. [58 Fed. 490; 19 U. S. App. 144] 7: 335
- Suffering judgment at law, subsequent assertion of equitable defense.  
[49 Fed. 506; 4 U. S. App. 274] 1: 339
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[87 Fed. 801; 59 U. S. App. 538] 31: 223
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[97 Fed. 670] 38: 354
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[49 Fed. 406; 4 U. S. App. 217] 1: 304
- To set aside assignment for creditors, right to jury as affecting.  
[54 Fed. 43; 8 U. S. App. 347] 4: 177
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[81 Fed. 10; 51 U. S. App. 374] 26: 306
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[98 Fed. 657] 39: 211
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[57 Fed. 677; 18 U. S. App. 293] 6: 500
- Necessity of tracing proceeds of unauthorized sale into particular funds.  
[59 Fed. 913; 8 U. S. App. 496] 8: 365
- Trust relation giving jurisdiction not exist between assignee and assignors of corporate stock.  
[66 Fed. 224; 23 U. S. App. 549] 13: 410
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Id.
- To compel personal representatives to satisfy decedent's debt.  
[95 Fed. 208] 36: 272
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[89 Fed. 783; 61 U. S. App. 596] 32: 337
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[90 Fed. 379; 61 U. S. App. 741] 33: 113
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[94 Fed. 582] 36: 402
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[100 Fed. 1] 40: 240
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- Nature of jurisdiction to sell infant's real estate, strict compliance.  
[53 Fed. 86; 6 U. S. App. 348] 3: 443
- Statutory extension of, over land of nonresidents served by publication.  
[85 Fed. 492; 56 U. S. App. 510] 29: 295

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## —Remedy at law.

Must be "as practicable and efficient" as remedy in equity.

[81 Fed. 261; 49 U. S. App. 438] 26: 389

Jurisdiction of Federal court to enforce equitable remedy granted by state, notwithstanding. [75 Fed. 742; 43 U. S. App. 770] 23: 498

Remedy existing only in state court insufficient in suit between citizens of different states. [98 Fed. 761] 39: 264

Mandamus in state court, equitable jurisdiction of Federal court.

[57 Fed. 324; 13 U. S. App. 411] 6: 349

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[57 Fed. 677; 18 U. S. App. 293] 6: 500

Suit to quiet title, objection for first time on appeal.

[82 Fed. 89; 48 U. S. App. 452] 27: 63

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[49 Fed. 529; 7 U. S. App. 33] 1: 345

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[58 Fed. 470; 8 U. S. App. 436] 7: 319

Right of judgment creditor of insolvent bank to compel allowance of claim by receiver. [79 Fed. 189; 48 U. S. App. 235] 24: 476

Suit against directors of national bank for excessive loans.

[86 Fed. 7; 57 U. S. App. 576] 29: 529

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[89 Fed. 832; 60 U. S. App. 431] 32: 368

Jurisdiction at law to render judgment against garnishee although accounting required, when nature of, not complicated. [98 Fed. 939] 39: 351

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[60 Fed. 21; 8 U. S. App. 526] 8: 389

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Id.

Defenses at law as basis for relief in equity.

[56 Fed. 694; 13 U. S. App. 308] 6: 83

Equitable relief based on defenses to action at law actually adjudicated.

Id.

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Id.

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[78 Fed. 837; 41 U. S. App. 736] 24: 362

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[75 Fed. 338; 41 U. S. App. 443] 21: 378

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[63 Fed. 204; 27 U. S. App. 291] 11: 135

Effect of stipulation to submit on agreed statement of facts.

[61 Fed. 491; 17 U. S. App. 502] 9: 582

Defeats prayer for discovery as ground of jurisdiction.

[59 Fed. 913; 8 U. S. App. 496] 8: 365

Existence of adequate or better remedy in equity as affecting jurisdiction at law.

[75 Fed. 43; 41 U. S. App. 761] 21: 208

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Where common question of law arising on similar facts involved.

[99 Fed. 801] 40: 93

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[49 Fed. 529; 7 U. S. App. 33] 1: 345

[50 Fed. 674; 4 U. S. App. 326] 1: 607

When more than one action possible but not necessary.

[92 Fed. 422] 34: 428

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[69 Fed. 546; 37 U. S. App. 378] 16: 305

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- Levied on equitable interests in land. [75 Fed. 627; 43 U. S. App. 623] 21: 457  
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 Bill in equity in Federal court to protect attachment obtained in state court.  
 [83 Fed. 769; 51 U. S. App. 663] 28: 199

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See also CANCELANON OF INSTRUMENTS; FRAUDULENT CONVEYANCES; REF-  
 ORMATION OF INSTRUMENTS.

- Of suit in Federal court for cancelation of policy procured by fraud from in-  
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 [66 Fed. 216; 23 U. S. App. 681] 13: 402  
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 [67 Fed. 948; 32 U. S. App. 272] 15: 96  
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 [71 Fed. 60; 36 U. S. App. 361] 17: 592  
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- [72 Fed. 301; 36 U. S. App. 419] 18: 573

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[93 Fed. 80] 35: 213
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- Scope of reference to master. [76 Fed. 101; 46 U. S. App. 150] 22: 75
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- See also Note,* 27: 475
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[68 Fed. 763; 34 U. S. App. 50] 15: 656
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[59 Fed. 321; 16 U. S. App. 608] 8: 137

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[94 Fed. 251] 36: 222

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[90 Fed. 337; 62 U. S. App. 173] 33: 84

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[51 Fed. 487; 10 U. S. App. 227] 2: 343

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[54 Fed. 63; 7 U. S. App. 481] 4: 189

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[51 Fed. 493; 4 U. S. App. 642] 2: 335

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[51 Fed. 487; 10 U. S. App. 227] 2: 343

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[86 Fed. 393; 58 U. S. App. 559] 30: 128

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[51 Fed. 493; 4 U. S. App. 642] 2: 335

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[53 Fed. 872; 10 U. S. App. 574] 4: 73

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[87 Fed. 970; 59 U. S. App. 366] 31: 334

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[55 Fed. 690; 12 U. S. App. 320] 5: 249

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[58 Fed. 297; 19 U. S. App. 1] 7: 237

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[49 Fed. 315; 4 U. S. App. 160] 1: 256

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[65 Fed. 23; 27 U. S. App. 594] 12: 490

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[73 Fed. 701; 42 U. S. App. 42] 19: 654

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[85 Fed. 246; 42 U. S. App. 742] 29: 137

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[59 Fed. 348; 19 U. S. App. 501] 8: 315

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[94 Fed. 251] 36: 222

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[98 Fed. 900] 39: 338
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[90 Fed. 189; 61 U. S. App. 531] 32: 571
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[51 Fed. 865; 7 U. S. App. 233] 2: 523
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[77 Fed. 324; 41 U. S. App. 438, 467, 609] 23: 187
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[78 Fed. 7; 49 U. S. App. 1] 23: 609
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[67 Fed. 948; 32 U. S. App. 272] 15: 96
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[85 Fed. 71; 56 U. S. App. 388] 29: 30
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[85 Fed. 55; 56 U. S. App. 363] 29: 14
- Who is indispensable or necessary party, agent procuring title and conveying to principal, bill to set aside for fraud.  
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[85 Fed. 55; 56 U. S. App. 363] 29: 14
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[87 Fed. 51; 57 U. S. App. 730] 30: 520
- Nonjoinder of necessary party curable by amendment. Id.
- Partner refusing to join in bill with other partner, necessity of joining him as defendant.  
[84 Fed. 69; 52 U. S. App. 417] 28: 382
- Rights of party brought in on defendant's petition against complainant's objection.  
[67 Fed. 837; 21 U. S. App. 658] 15: 33
- Parties to ancillary suits representing in one district rights of lienors on property in another.  
[68 Fed. 263; 31 U. S. App. 486] 15: 397
- Bill by owner of entire capital stock, necessity of making corporation a defendant.  
[81 Fed. 14; 41 U. S. App. 691] 26: 309
- Misjoinder of defendants, dismissal of bill as to one.  
[85 Fed. 662; 50 U. S. App. 314] 29: 386

**EQUITY—continued.**

Joinder of improper party cured by amendment.

[87 Fed. 51; 57 U. S. App. 730] 30: 520

How objection of defect of parties raised.

[77 Fed. 787; 41 U. S. App. 766] 23: 459

**Pleadings—Bill.**

Bill by stockholder, necessity of pleading particularly efforts to secure action by directors.

[81 Fed. 10; 51 U. S. App. 374] 26: 306

Joinder of legal and equitable matters in bill to enforce rights of United States in telegraphic property and franchises.

[59 Fed. 813; 19 U. S. App. 531] 8: 282

When averment as to amount of liability exceeding jurisdictional amount is a mere conclusion of law.

[85 Fed. 471; 56 U. S. App. 10] 29: 275

Sufficiency of bill to enforce subcontractor's lien.

[67 Fed. 84; 31 U. S. App. 387] 14: 314

Sufficiency of allegation as to concealment and time of discovering fraud.

[87 Fed. 51; 57 U. S. App. 730] 30: 520

Effect on allegations of disclosure of sources of information.

[85 Fed. 55; 56 U. S. App. 363] 29: 14

Requisites of bill attacking decision of land department.

[80 Fed. 425; 49 U. S. App. 305] 25: 523

Effect on positive allegations of fraud of disclosure of bill as to sources of complainant's information.

[85 Fed. 67; 56 U. S. App. 383] 29: 26

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[84 Fed. 371; 50 U. S. App. 271] 28: 431

Bill for discovery and accounting demurrable if no right to accounting.

[71 Fed. 570; 39 U. S. App. 34] 18: 251

Bill for discovery and accounting against mortgagees a bill to redeem, not a creditor's bill.

[64 Fed. 535; 24 U. S. App. 428] 12: 275

Bill attacking decision of land department, sufficiency of allegations as to fraud and imposition.

[80 Fed. 425; 49 U. S. App. 305] 25: 523

Resting on prayer for injunction not as primary remedy.

[59 Fed. 913; 8 U. S. App. 496] 8: 365

Necessity of special prayer for deficiency judgment in foreclosure.

[79 Fed. 179; 48 U. S. App. 255] 24: 512

Effect of prayer for equitable relief in court having only common-law jurisdiction.

[75 Fed. 43; 41 U. S. App. 761] 21: 208

Disregarding as surplusage.

Id.

**—Answer and plea.**

Mode of testing sufficiency of answer.

[75 Fed. 742; 43 U. S. App. 770] 23: 498

Setting up usury.

[62 Fed. 665; 23 U. S. App. 653] 10: 582

Time allowed after filing answer in which to file exceptions or general replications.

[85 Fed. 598; 55 U. S. App. 715] 29: 303

Sufficiency of notice of prior patents to warrant their introduction in support of defense of anticipation.

[60 Fed. 610; 20 U. S. App. 446] 9: 157

Admissibility under answer in patent case of dates of respective inventions.

[60 Fed. 605; 18 U. S. App. 538] 9: 154

No certificate of counsel to answer to merits required.

[87 Fed. 586; 59 U. S. App. 452] 31: 114

Granting leave to add certificates to answers not decision that certificates necessary.

Id.

Answer to cross bill, when responsive.

[66 Fed. 234; 30 U. S. App. 68] 13: 420

Motion to strike out parts of answer must be specific.

[87 Fed. 586; 59 U. S. App. 452] 31: 114

Raising sufficiency of answer by exception.

[88 Fed. 576; 60 U. S. App. 124] 31: 462

**EQUITY—continued.**

- Stating nothing but conclusions of law disregarded.  
[66 Fed. 216; 23 U. S. App. 681] 13: 402
- When plea of pendency of another suit not referred to master.  
[80 Fed. 417; 49 U. S. App. 387] 25: 518
- Setting off claim *in rem* against claim *in personam*.  
[81 Fed. 454; 82 Fed. 272; 54 U. S. App. 67, 103] 26: 472
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[65 Fed. 215; 24 U. S. App. 542] 12: 578
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[97 Fed. 696] 38: 365

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- Federal jurisdiction of, where relief sought ancillary to suit properly removed to Federal court.  
[98 Fed. 647] 39: 201
- By party brought in against complainant's objection.  
[67 Fed. 837; 21 U. S. App. 658] 15: 33
- Scope of cross bill, presenting new facts and new issues.  
[81 Fed. 261; 49 U. S. App. 438] 26: 389
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- Raising sufficiency of answer by. [88 Fed. 576; 60 U. S. App. 124] 31: 462
- Grounds of, defaults of assignee of patent, suit against assignor for infringement.  
[61 Fed. 953; 22 U. S. App. 404] 10: 189
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[70 Fed. 429; 25 U. S. App. 443] 17: 175
- When answer to responsive. [66 Fed. 234; 30 U. S. App. 68] 13: 420
- Dismissal of cross bill for abuse of leave to file it.  
[80 Fed. 450; 53 U. S. App. 270] 25: 549
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[70 Fed. 429; 25 U. S. App. 443] 17: 175
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[72 Fed. 402; 36 U. S. App. 402] 18: 618
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[98 Fed. 785] 39: 386
- Necessity of, to set up fraud inducing purchase in suit against grantee assuming mortgage.  
[86 Fed. 837; 59 U. S. App. 252] 30: 427
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[93 Fed. 538] 35: 419
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[70 Fed. 429; 25 U. S. App. 443] 17: 175
- Making bill in suit to restrain attachment, cross bill in suit to aid attachment.  
[75 Fed. 636; 43 U. S. App. 640] 21: 466
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- Sufficiency of answer cannot be tested by demurrer.  
[88 Fed. 576; 60 U. S. App. 124] 31: 462
- Joinder of improper party raised by demurrer.  
[87 Fed. 51; 57 U. S. App. 730] 30: 520
- Hearing evidence submitted by consent upon demurrer to bill.  
[79 Fed. 32; 41 U. S. App. 741] 24: 435
- Taking advantage by demurrer of matter detrimental to complainant's case alleged in bill.  
[89 Fed. 1; 50 U. S. App. 407] 32: 151
- Filing demurrer to plea instead of setting plea down for argument.  
[80 Fed. 417; 49 U. S. App. 387] 25: 518
- When irregularity may be ignored, practice. Id.

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Raising defense of laches by demurrer.

[53 Fed. 901; 10 U. S. App. 657] 4: 95

[87 Fed. 51; 57 U. S. App. 730] 30: 520

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[89 Fed. 1; 50 U. S. App. 407] 32: 151

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[85 Fed. 74; 55 U. S. App. 267] 29: 33

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[97 Fed. 367] 38: 592

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[94 Fed. 375] 36: 301

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[87 Fed. 586; 59 U. S. App. 452] 31: 114

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In suit for reformation of mortgage. [56 Fed. 278; 15 U. S. App. 79] 5: 592

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[58 Fed. 58; 19 U. S. App. 36; 24 L. R. A. 73] 7: 15

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Id.

Overcoming.

[48 Fed. 780; 2 U. S. App. 40] 1: 93

—**Duplicity; redundancy; scandalous.**

Plea held not to be duplicitous. [85 Fed. 74; 55 U. S. App. 267] 29: 33

Definition of scandalous and impertinent matter.

[85 Fed. 55; 56 U. S. App. 363] 29: 14

Power of court *ex mero motu* to strike from bill tautological, scandalous, or impertinent matter.

Id.

—**Multifariousness; misjoinder of causes.**

Multifariousness, general rule. [85 Fed. 67; 56 U. S. App. 383] 29: 26

When bill multifarious.

[66 Fed. 799; 31 U. S. App. 244] 14: 97

[76 Fed. 662; 46 U. S. App. 242] 22: 465

[89 Fed. 783; 61 U. S. App. 596] 32: 337

Multifariousness, asking for relief to which not entitled.

[81 Fed. 10; 51 U. S. App. 374] 26: 306

Multifariousness, seeking recovery for infringement of several patents.

[81 Fed. 726; 49 U. S. App. 414] 26: 578

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[71 Fed. 60; 36 U. S. App. 361] 17: 592

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[68 Fed. 769; 34 U. S. App. 81] 15: 662

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[64 Fed. 535; 24 U. S. App. 428] 12: 275

Misjoinder of causes of action, general rule.

[85 Fed. 55; 56 U. S. App. 363] 29: 14

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Id.

—**Amended and supplemental pleadings.**

Amendment after announcement of final decision.

[57 Fed. 257; 18 U. S. App. 27] 6: 326

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[66 Fed. 376; 27 U. S. App. 677] 13: 523

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[75 Fed. 627; 43 U. S. App. 623] 21: 457

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[66 Fed. 376; 27 U. S. App. 677] 13: 523

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[66 Fed. 216; 23 U. S. App. 681] 13: 402

**EQUITY—continued.**

- Joinder of improper party curable by amendment.  
[87 Fed. 51; 57 U. S. App. 730] 30: 520
- Amendments omitting all allegations against one defendant not state new cause of action.  
[87 Fed. 41; 59 U. S. App. 288] 30: 510
- Proper method of introducing declaration of maturity of entire mortgage pending foreclosure for interest.  
[79 Fed. 179; 48 U. S. App. 255] 24: 512
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- Discretion as to granting leave to file amended answer and cross bill.  
[79 Fed. 522; 47 U. S. App. 470] 25: 50
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[77 Fed. 787; 41 U. S. App. 766] 23: 459

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- Relief from forfeiture for nonpayment of taxes, failure to do equity.  
[60 Fed. 21; 8 U. S. App. 526] 8: 389
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[65 Fed. 30; 27 U. S. App. 618] 12: 497
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[80 Fed. 564; 42 U. S. App. 508] 25: 644
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[53 Fed. 901; 10 U. S. App. 657] 4: 95
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[57 Fed. 333; 13 U. S. App. 399] 6: 358
- Method of trial, bill to protect, privacy of papers, appointing special master.  
[50 Fed. 860; 5 U. S. App. 49] 2: 60

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[79 Fed. 522; 47 U. S. App. 470] 25: 50
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[62 Fed. 519; 23 U. S. App. 579] 10: 532
- Condition precedent, requiring payment of sum found by master on facts not pleaded.  
[81 Fed. 907; 53 U. S. App. 414] 26: 675
- Effect of abandonment of contention set up in answer. Id.
- What affirmative relief granted where no cross bill filed.  
[93 Fed. 538] 35: 419
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[68 Fed. 263; 31 U. S. App. 486] 15: 397
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[52 Fed. 439; 10 U. S. App. 298; 18 L. R. A. 266] 3: 176
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[58 Fed. 473; 8 U. S. App. 461] 7: 322  
[60 Fed. 139; 23 U. S. App. 224] 8: 522
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When bill not dismissed although adequate remedy at law. [76 Fed. 408; 47 U. S. App. 19] 22: 248

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**—Leave to file.**

Necessity of leave to file after decisions on appeal, see Note, 4: 72

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[53 Fed. 31; 5 U. S. App. 215] 3: 411

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[68 Fed. 618; 30 U. S. App. 393] 15: 604

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[77 Fed. 512; 47 U. S. App. 170] 23: 263

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[73 Fed. 908; 33 U. S. App. 452] 20: 111

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Id.

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[92 Fed. 115] 34: 240

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[73 Fed. 908; 33 U. S. App. 452] 20: 111

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[98 Fed. 121] 38: 661

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Decree against infants, consent.

[53 Fed. 854; 9 U. S. App. 406] 4: 55

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Id.

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[52 Fed. 1; 2 U. S. App. 254] 2: 587

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[50 Fed. 484; 8 U. S. App. 19] 1: 535

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[56 Fed. 762; 9 U. S. App. 578] 6: 111

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[85 Fed. 103; 56 U. S. App. 149] 29: 41

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Id.

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[77 Fed. 512; 47 U. S. App. 170] 23: 263

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Id.

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[53 Fed. 854; 9 U. S. App. 406] 4: 55

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[63 Fed. 1; 27 U. S. App. 204] 11: 1

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[60 Fed. 1005; 22 U. S. App. 1; 24 L. R. A. 170] 9: 326

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[60 Fed. 220; 23 U. S. App. 89] 8: 577

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[71 Fed. 378; 30 U. S. App. 606] 18: 193

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[65 Fed. 848; 21 U. S. App. 639] 13: 171

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[93 Fed. 564] 35: 445

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[90 Fed. 337; 62 U. S. App. 173] 33: 84

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[96 Fed. 630] 38: 467

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[98 Fed. 647] 39: 201

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[63 Fed. 438; 24 U. S. App. 162] 11: 277

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[52 Fed. 752; 9 U. S. App. 25] 3: 274

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[71 Fed. 460; 34 U. S. App. 432] 18: 193

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[71 Fed. 127; 36 U. S. App. 307] 18: 1

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[51 Fed. 868; 6 U. S. App. 128] 2: 526

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[91 Fed. 60; 50 U. S. App. 484; 43 L. R. A. 618] 33: 328

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[93 Fed. 93] 35: 226

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[87 Fed. 63; 57 U. S. App. 638] 30: 532

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[97 Fed. 263] 38: 159

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To set up exhaustion of funds on which warrant drawn. [81 Fed. 645; 52 U. S. App. 348] 26: 508

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- Of firm to claim credit for payments made by one partner when denying liability for services rendered to him. [91 Fed. 222; 62 U. S. App. 632] 33: 465
- To claim title to land by recognizing title of prior grantee.  
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- Of purchaser of vessel for another to show his true relation to vessel.  
[79 Fed. 95; 47 U. S. App. 589] 24: 453
- Of mortgagor to complain of mortgagee's want of diligence in renting.  
[78 Fed. 708; 47 U. S. App. 394] 24: 294
- Of wife to claim homestead by representations in application for a loan.  
[80 Fed. 321; 52 U. S. App. 29] 25: 438
- Estoppel of married women to deny validity of lease by allegations of validity.  
[98 Fed. 647] 39: 201
- Letter intimating that no suit would be brought for unlawful use of tradename.  
[51 Fed. 941; 5 U. S. App. 112; 17 L. R. A. 354] 2: 555
- Of vendor to look to party interested in purchase by accepting individual notes of transferee.  
[94 Fed. 468] 36: 330
- Mistake as to date of notice to terminate license.  
[61 Fed. 731; 22 U. S. App. 313] 10: 28
- To maintain suit to cancel railroad company's title to land by claiming under.  
[67 Fed. 975; 32 U. S. App. 311] 15: 123
- Of improvement company to deny railroad's title to rolling stock.  
[48 Fed. 850; 2 U. S. App. 1] 1: 116
- Of bank to enforce note by assuming ownership of collateral given to maker by cashier.  
[63 Fed. 26; 22 U. S. App. 493] 11: 16
- To treat pooling agreement as inoperative after violation by other parties by previous treatment. [86 Fed. 638; 57 U. S. App. 55] 30: 315
- Of insurer, by course of dealing, to insist on forfeiture for delay in paying assessment. [75 Fed. 65; 44 U. S. App. 527] 21: 227
- To deny truth of representations on which another has acted.  
[76 Fed. 271; 40 U. S. App. 257; 34 L. R. A. 518] 22: 171
- Conduct estopping to assert title or right of possession in ejectment.  
[65 Fed. 742; 31 U. S. App. 30] 13: 101
- Representation to surety on cashier's bond as to extent of liability to bank.  
[87 Fed. 157; 57 U. S. App. 618] 30: 584
- To assert invalidity of mortgage by purchasing subject to.  
[73 Fed. 956; 36 U. S. App. 563] 20: 133
- To claim that product for which tradename claimed a new article of manufacture. [98 Fed. 872] 39: 321
- To claim rights under contract by claiming to act for undisclosed principal.  
[96 Fed. 164] 37: 434
- By participation in proceeding for taking testimony, to object to payment of special master and stenographer from funds in court.  
[99 Fed. 324] 39: 540

**By receiving benefits.**

- To appeal. [60 Fed. 644; 19 U. S. App. 651] 9: 173

**ESTOPPEL—continued.**

- Of city to deny power to make contract.  
[87 Fed. 829; 59 U. S. App. 131] 31: 238
- Of county to deny validity of unauthorized road improvement certificates.  
[86 Fed. 872; 58 U. S. App. 663] 30: 445
- Of railroad company operating two roads using depot to claim rental illegal as to one road.  
[89 Fed. 648; 60 U. S. App. 675] 32: 284
- Of corporation to deny validity of indorsement.  
[85 Fed. 120; 55 U. S. App. 747] 29: 45
- Of corporation to deny validity of mortgage after receiving proceeds of bonds.  
[82 Fed. 124; 49 U. S. App. 523] 27: 73
- To deny that signature by copartner to forthcoming bond in attachment not authorized.  
[98 Fed. 793] 39: 294
- Of grantor to dispute agent's conveyance, by receiving proceeds.  
[86 Fed. 668; 29 U. S. App. 540] 14: 41
- Of national bank to assert want of power to make purchase.  
[77 Fed. 85; 40 U. S. App. 646] 23: 33
- To deny abatement of legacy by receiving ratable proportion.  
[55 Fed. 803; 6 U. S. App. 626] 5: 266
- Of corporation to deny validity of contract after part performance.  
[51 Fed. 309; 10 U. S. App. 98] 2: 174
- To sue on original notes after accepting payment on compromise notes, evidence.  
[75 Fed. 852; 43 U. S. App. 698] 21: 538
- Of heirs to repudiate agreement to convey land to purchasers at partition sale.  
[98 Fed. 900] 39: 338

**By acquiescence.**

- In use of trademark.  
[57 Fed. 938; 17 U. S. App. 145] 6: 647  
[74 Fed. 936; 45 U. S. App. 62] 21: 178
- In adverse claim to land.  
[53 Fed. 709; 2 U. S. App. 531] 3: 631
- In payment of solicitor's fee out of fund in court.  
[66 Fed. 179; 30 U. S. App. 119] 13: 386
- In payment of special master's costs out of fund in court. Id.
- In assignment for creditors by partnership.  
[61 Fed. 874; 27 U. S. App. 49] 10: 135
- Of government by confirming lands erroneously certified to state.  
[84 Fed. 40; 55 U. S. App. 246] 28: 267
- Of stockholders to complain of judgment against corporation.  
[76 Fed. 678; 40 U. S. App. 567] 22: 477
- Subscribers for increase of bank stock, retaining three years without objection, original stock issued.  
[99 Fed. 801] 40: 93
- Of state to claim land under swamp land grant.  
[69 Fed. 116; 37 U. S. App. 220] 16: 345
- Of mortgagee to claim right to redeem from judicial sale several years thereafter.  
[65 Fed. 882; 27 U. S. App. 631] 13: 186
- Sale of interest in syndicate with knowledge that purchaser claims that bonds in his possession are held as collateral for claim of syndicate.  
[80 Fed. 978; 53 U. S. App. 195] 26: 287
- From claiming injunction against cutting timber.  
[78 Fed. 222; 42 U. S. App. 263] 24: 71
- To maintain ejectment against railroad company by remaining inactive till road in operation.  
[87 Fed. 648; 59 U. S. App. 487] 31: 183
- Of seller of property on public land, by acquiescing in purchaser's claim, to be refunded for cancelation of entry by government.  
[94 Fed. 068] 36: 587
- By acquiescence in parol partition.  
[65 Fed. 742; 31 U. S. App. 30] 13: 101  
[70 Fed. 561; 37 U. S. App. 436] 17: 217

**Silence; concealment.**

- Silence, when not.  
C. C. A.—20. [76 Fed. 349; 40 U. S. App. 349] 22: 190

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- From attacking account rendered for fraud, omission, or mistake.  
[85 Fed. 150; 42 U. S. App. 716] 29: 56
- As to indebtedness to bank of person concerning whose standing inquiry made.  
[83 Fed. 725; 54 U. S. App. 510] 28: 42
- To deny existence of contract under which advances made, by remaining silent.  
[90 Fed. 628; 61 U. S. App. 94] 33: 194
- By concealment of facts about which no inquiry made.  
[63 Fed. 48; 22 U. S. App. 439] 11: 96
- By existing default of treasurer whose fidelity guaranteed. 1d.
- After renunciation of agency for collection.  
[56 Fed. 967; 16 U. S. App. 1] 6: 183
- Failure to notify bank making advances of assignment of policy of insurance.  
[58 Fed. 633; 19 U. S. App. 256] 7: 391
- Of prior mortgagee, to assert priority over subsequent mortgage.  
[78 Fed. 16; 41 U. S. App. 700] 23: 619

**After prejudice to other party.**

- Of corporation to deny power to give guaranty after performance.  
[62 Fed. 356; 22 U. S. App. 334] 10: 415
- To redeem from judicial sale after large expenditures by purchaser.  
[65 Fed. 882; 27 U. S. App. 631] 13: 186
- To deny certain understanding of contract after permitting other party to act thereon.  
[94 Fed. 968] 36: 587
- Of grantor to dispute conveyance, by permitting improvements.  
[66 Fed. 668; 29 U. S. App. 540] 14: 41

**By act of third person.**

- Of company guaranteeing fidelity of treasurer by his entries on the corporate books.  
[63 Fed. 48; 22 U. S. App. 439] 11: 96
- Of married woman to dispute parol partition by husband.  
[65 Fed. 742; 31 U. S. App. 30] 13: 101
- Of married woman by husband's parol partition.  
[70 Fed. 561; 37 U. S. App. 436] 17: 217
- Of railway company to claim reductions below estimates of engineer.  
[67 Fed. 633; 31 U. S. App. 606] 14: 583
- Of member of local board of underwriters by inspector's certificate as to seaworthiness of vessel.  
[68 Fed. 924; 30 U. S. App. 376] 16: 67

**By relation of parties.**

- To deny vendor's title. [70 Fed. 529; 37 U. S. App. 1, 199] 17: 251
- Of tenant to deny landlord's title, when relation established.  
[54 Fed. 461; 7 U. S. App. 539] 4: 438
- Of attorney to acquire interest in land on which judgment for client should have been lien.  
[86 Fed. 393; 58 U. S. App. 559] 30: 128

**In respect to patents.**

- To deny validity of patent alleged to be infringed.  
[89 Fed. 308; 60 U. S. App. 572] 32: 216
- Of plaintiff in suit for infringement by entering into combination for control of business.  
[53 Fed. 592; 11 U. S. App. 712] 3: 605
- By patentee's acquiescence in commissioner's requirement as to limitation of mechanisms combined.  
[92 Fed. 146; 63 U. S. App. 626] 34: 248
- By amendment of claims to meet requirements of patent office.  
[97 Fed. 87] 38: 56
- By acquiescing in rejection of claim covering one feature of invention, and filing substituted claim.  
[97 Fed. 964] 38: 587
- As to devices, combinations, or improvements apparent from specifications and claims, for which no claim made.  
[97 Fed. 217] 38: 123
- By surrendering something claimed in patent to obtain something allowed.  
[94 Fed. 524] 36: 375

**ESTOPPEL—continued.**

- To question validity of patent, assisting in procuring license and promoting corporation to carry on business under.  
[53 Fed. 98; 6 U. S. App. 335] 3: 455
- Against alleged infringer of patent by previously holding license.  
[95 Fed. 604] 37: 221
- By assignment of patent. [60 Fed. 283; 21 U. S. App. 98] 8: 622
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[59 Fed. 897; 17 U. S. App. 452] 8: 357
- Of licensee of patent to dispute its validity subsequently.  
[75 Fed. 17; 43 U. S. App. 391] 21: 198
- To deny validity of license granted before patent issued.  
[52 Fed. 945; 7 U. S. App. 409] 3: 368
- Of assignor of patent to deny validity.  
[63 Fed. 607; 21 U. S. App. 443] 11: 351  
[67 Fed. 786; 33 U. S. App. 157] 14: 642  
[82 Fed. 97; 50 U. S. App. 164] 27: 69
- Assignor of patent not estopped to deny infringement as against assignee.  
[99 Fed. 90] 39: 426
- Waiver of assignor's estoppel to deny validity of patent.  
[63 Fed. 609; 21 U. S. App. 463] 11: 353
- Of licensor of patent to deny its operation.  
[69 Fed. 371; 37 U. S. App. 299] 16: 259
- Of assignee of future patents, to claim interest in patent abandoned by him.  
[84 Fed. 887; 51 U. S. App. 722] 28: 561
- Denial that assignee of patent is successor to assignor's business.  
[51 Fed. 941; 5 U. S. App. 112; 17 L. R. A. 354] 2: 555

**Insolvency, bankruptcy, and receivership matters.**

- To deny validity of assignment for creditors by presenting claims to assignee.  
[94 Fed. 630] 36: 430
- To file petition in bankruptcy by appearing in state court.  
[95 Fed. 637] 37: 210
- Of bankrupt to deny validity of judgment by obtaining discharge on claim of its validity. [68 Fed. 522; 26 U. S. App. 777; 35 U. S. App. 315] 15: 559
- To file petition for bankruptcy by filing claims under assignment for creditors.  
[95 Fed. 948] 37: 337
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- Of receiver to question validity of certificates.  
[57 Fed. 25; 13 U. S. App. 506] 6: 242
- To object to payments made by railroad receivers by obtaining orders for.  
[91 Fed. 5; 62 U. S. App. 1] 33: 299

**To deny corporate existence.**

- To question validity of consolidation of corporations, dealing with *de facto* consolidated corporations. [84 Fed. 539; 56 U. S. App. 208] 28: 202
- To deny corporate existence by contracting with corporation.  
[77 Fed. 774; 46 U. S. App. 619] 23: 454
- Of creditors to deny corporate existence of *de facto* corporation.  
[95 Fed. 497] 36: 155

**In respect to corporate stock and stockholders.**

- To deny validity of increase of capital stock by accepting stock and taking of-  
fice. [79 Fed. 10; 47 U. S. App. 605; 38 L. R. A. 616] 24: 425
- To deny personal liability on bank stock.  
[71 Fed. 153; 36 U. S. App. 234] 18: 18
- To deny liability to assessment as bank stockholder by accepting certificate of  
stock and receiving dividends. [94 Fed. 349] 36: 292
- To deny being stockholder in bank. [73 Fed. 693; 36 U. S. App. 676] 19: 651



**ESTOPPEL—continued.**

- Of subscriber to question regularity of increase of capital stock of national bank. [85 Fed. 934; 56 U. S. App. 636] 29: 491
- To deny liability on subscription to unlawful increase of stock. [66 Fed. 633; 32 U. S. App. 97] 13: 661
- To deny sufficiency of transfer of stock to wife's executor. [70 Fed. 424; 25 U. S. App. 434] 17: 170
- Of corporation to claim lien on stock for transferee's debts. [63 Fed. 898; 27 U. S. App. 486] 11: 484
- Of dissenting stockholders to complain of transfer to new corporation. [84 Fed. 371; 50 U. S. App. 271] 28: 431

**Acts, declarations, and authority of corporate officers.**

- Of bank to deny officer's authority. [66 Fed. 34; 32 U. S. App. 29] 13: 313
- Of corporation to deny president's authority to execute notes and mortgage. [95 Fed. 23] 36: 633
- To deny authority of bank president to indorse paper for rediscount. [79 Fed. 290; 49 U. S. App. 67] 24: 597
- Of corporation to deny authority of president permitted to exercise full power. [95 Fed. 23] 36: 633
- Of bank by president's course of dealing to deny his authority to draw drafts for personal use. [94 Fed. 30; 45 L. R. A. 822] 36: 56
- Of corporation to deny authority of directors irregularly elected. [73 Fed. 452; 26 U. S. App. 779; 38 U. S. App. 563] 19: 528
- Of corporation to claim that president exceeded authority in pledging contract. [88 Fed. 217; 60 U. S. App. 209] 31: 487
- Of corporation to deny directors' authority to borrow money, by using it. [66 Fed. 104; 27 U. S. App. 765] 13: 457
- Of bank to deny cashier's authority. [77 Fed. 129; 40 U. S. App. 690] 23: 80
- Of bank by cashier's statement as to business standing of third person. [83 Fed. 725; 54 U. S. App. 510] 28: 42
- Of corporation to deny validity of notes executed by president. [95 Fed. 23] 36: 633
- By conversation with officer unauthorized to make representations. [63 Fed. 48; 22 U. S. App. 439] 11: 96
- Of bank to set up cashier's mistake in giving in stock for taxation. [90 Fed. 214; 61 U. S. App. 630] 32: 580

**Ultra vires.**

- Of bank to assert that conveyance was *ultra vires*. [73 Fed. 945; 36 U. S. App. 702] 20: 122
- Of corporation to deny contract, no power to make. [86 Fed. 742; 58 U. S. App. 674] 30: 409
- Of bank to plead that purchase of stock in another corporation was *ultra vires*. [79 Fed. 51; 33 U. S. App. 747] 24: 444
- Of stockholders by acts to deny validity of *ultra vires* act. [66 Fed. 104; 27 U. S. App. 765] 13: 457
- Of corporation to deny liability on *ultra vires* contract. [94 Fed. 925] 36: 553

**Agency; acts, declarations, and authority of agent.**

- Of holder of title of vessel as security to deny agency of manager. [79 Fed. 95; 47 U. S. App. 589] 24: 453
- To revoke power of attorney to collect money from government on cancelation of entry on land. [94 Fed. 968] 36: 587
- Of carrier by act of servant. [49 Fed. 801; 4 U. S. App. 264] 1: 435
- By agent's declaration as to title to land conveyed. [72 Fed. 96; 25 U. S. App. 679] 18: 444
- By agent's knowledge of encumbrance on property. [94 Fed. 990] 36: 615

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Of firm by act of some of members in individual transaction.  
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Available to transferee from bona fide purchaser of bonds.  
[97 Fed. 270] 38: 167

Of bondholders to object to allowance to receiver or trips to Europe at their instigation.  
[87 Fed. 505; 59 U. S. App. 74] 31: 94

Of county by payment of interest to set up irregularity in issue of bonds.  
[80 Fed. 672; 49 U. S. App. 336] 26: 82

To deny validity of railroad aid bonds issued by county.  
[72 Fed. 623; 43 U. S. App. 21] 19: 44

Of organizer of corporation to set up vendor's lien as against bondholders.  
[90 Fed. 348; 62 U. S. App. 141] 33: 95

Of railroad company to deny guaranty of bonds of other company as against bona fide purchasers.  
[98 Fed. 666] 39: 220

Of improvement company to deny railroad company's title to rolling stock as against bondholders.  
[48 Fed. 850; 2 U. S. App. 1] 1: 116

Of seller of rolling stock to improvement company.  
[48 Fed. 865; 2 U. S. App. 120] 1: 130

Of sureties on bond to deny its validity.  
[70 Fed. 209; 36 U. S. App. 81] 16: 498

Of interveners in attachment by giving redelivery bond.  
[59 Fed. 752; 19 U. S. App. 448] 8: 248

Of sureties to deny possession of statutory qualification.  
[70 Fed. 209; 36 U. S. App. 81] 16: 498

**By recitals—In general.**

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In contract, not specially pleaded. [60 Fed. 645; 18 U. S. App. 542] 9: 174

In articles of association, as to interest in property. Id.

In bottomry bond. [54 Fed. 188; 7 U. S. App. 660] 4: 273

In articles of association of new company that property of old company did not pass.  
[66 Fed. 224; 23 U. S. App. 549] 15: 410

In will that property devised is community property.  
[68 Fed. 43; 29 U. S. App. 651; 33 L. R. A. 759] 15: 201

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See also **COUNTIES; MUNICIPAL CORPORATIONS.**

Only as to matters of fact not of public record.  
[57 Fed. 137; 12 U. S. App. 562] 6: 288

As to compliance with conditions on which subscription made.  
[69 Fed. 58; 30 U. S. App. 295] 16: 125

To deny liability on bonds regular on face.  
[88 Fed. 749; 60 U. S. App. 38] 32: 101

To deny existence or validity of act under which bonds issued.  
[96 Fed. 293] 37: 493

"Authorized by" specified act. [88 Fed. 449; 60 U. S. App. 78] 31: 585

As to power to issue. [57 Fed. 137; 12 U. S. App. 562] 6: 288

As to act authorizing issuance, preliminary steps.  
[51 Fed. 362; 4 U. S. App. 622] 2: 272

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[69 Fed. 708; 32 U. S. App. 640] 16: 395

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[62 Fed. 778; 27 U. S. App. 244] 10: 637

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- As to conformity to act. [60 Fed. 55; 16 U. S. App. 656, 709] 8: 455  
 [90 Fed. 222; 61 U. S. App. 41] 32: 585  
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 [57 Fed. 149; 12 U. S. App. 551] 6: 296  
 [69 Fed. 943; 32 U. S. App. 725] 16: 553  
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- Village estopped as against bona fide holder of bonds by recital of issuance in conformity with statute. [100 Fed. 56] 40: 281
- Of issuance in conformity with statute authorizing issue under specified conditions. [97 Fed. 145] 38: 84
- By general recital that all requirements of law complied with, where each bond shows limit of indebtedness exceeded. [97 Fed. 732] 38: 392
- As to preliminary proceedings. [62 Fed. 778; 27 U. S. App. 244] 10: 637
- Of township, to assert irregularities in election authorizing issuance, or defects in preliminary proceedings. [99 Fed. 202] 39: 462
- Validity of ordinance authorizing issue. [54 Fed. 100; 10 U. S. App. 692] 4: 212
- As to compliance with requirements, constitutional requisite. [62 Fed. 778; 27 U. S. App. 244] 10: 637
- As to compliance with constitutional requirements where book required by statute not kept. [97 Fed. 270] 38: 167
- To show invalidity as donation to railroad company. [73 Fed. 917; 34 U. S. App. 680] 20: 227  
 [73 Fed. 927; 34 U. S. App. 686] 20: 232
- To set up fraudulent conduct of officials. [64 Fed. 453; 22 U. S. App. 635] 12: 218
- To deny that bonds were issued to refund indebtedness. [69 Fed. 943; 32 U. S. App. 725] 16: 553
- To deny validity of refunded debt. [90 Fed. 222; 61 U. S. App. 41] 32: 585  
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- Refunding bond, invalidity of old bonds. [58 Fed. 935; 16 U. S. App. 545] 7: 574
- To set up that part of refunded indebtedness was void. [83 Fed. 296; 49 U. S. App. 642] 27: 531
- That bonds issued by township to fund and retire certain outstanding legal indebtedness. [98 Fed. 804] 39: 301
- City authorities no power to make recitals in refunding bonds estopping it from proving their invalidity from public records. [98 Fed. 387] 39: 106
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- To plead overissue. [54 Fed. 487; 13 U. S. App. 126] 4: 460
- That legal limit of indebtedness has not been exceeded. [80 Fed. 672; 49 U. S. App. 336] 26: 82
- That constitutional limitation not exceeded. [97 Fed. 270] 38: 167
- As to organization of county. [57 Fed. 137; 12 U. S. App. 562] 6: 288
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- To deny issuance under proper conditions. [73 Fed. 966; 34 U. S. App. 719] 20: 142
- Township estopped as against innocent purchaser of bonds to deny truth of recitals as to regularity of issue. [86 Fed. 261; 57 U. S. App. 611] 30: 27  
 [87 Fed. 304; 59 U. S. App. 21] 30: 657
- Of county to prove other records or facts than those shown by public record to overthrow bonds. [97 Fed. 270] 38: 167
- Of issuance in satisfaction of judgments against county. [97 Fed. 435] 38: 250
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- Of official record of division of county into districts.  
[72 Fed. 361; 43 U. S. App. 1] 18: 590
- Of record of election and commission of justices entitled to sit at session of county court. Id.
- Of prior state of art. [100 Fed. 452] 40: 484  
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[100 Fed. 452] 40: 484
- Of facts showing want of novelty or invention in patent.  
[72 Fed. 508; 37 U. S. App. 742] 18: 662
- Of signature of governmental secretary for colony whose character as such historically known. [93 Fed. 899] 35: 646
- Of facts of natural history, depreciation of unimproved native sheep.  
[55 Fed. 964; 8 U. S. App. 409] 5: 359
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[97 Fed. 974] 38: 617

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- Of geographical facts. [58 Fed. 723; 19 U. S. App. 266; 22 L. R. A. 325] 7: 444
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- From failure to offer evidence obtainable. [94 Fed. 180] 36: 135
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- That one riding in passenger coach is lawfully there.  
[53 Fed. 997; 12 U. S. App. 115] 4: 146
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[80 Fed. 337; 42 U. S. App. 483] 25: 453
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[95 Fed. 637] 37: 210
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[74 Fed. 350; 43 U. S. App. 278] 20: 436
- Of death, before seven years' absence. [71 Fed. 258; 36 U. S. App. 401] 18: 107
- That water left aboard ship caused damage to goods.  
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[79 Fed. 756; 51 U. S. App. 216; 35 L. R. A. 400] 25: 648
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[73 Fed. 23; 41 U. S. App. 117] 19: 353
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[79 Fed. 445; 50 U. S. App. 11] 25: 32
- That railway agent contemplated loss of profits of theatrical troupe taking passage by train if train delayed. [87 Fed. 149; 58 U. S. App. 131] 32: 19
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[83 Fed. 66; 53 U. S. App. 580] 27: 442
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[66 Fed. 677; 30 U. S. App. 40] 14: 50
- That issue as to defendant's ability to make rational defense not raised by denial of continuance.  
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 That clerk administered oath within his jurisdiction. [85 Fed. 492; 56 U. S. App. 510] 29: 295  
 That land ordered sold was within court's jurisdiction. [67 Fed. 684; 31 U. S. App. 626] 14: 625  
 Of reapproval of supersedeas bond after writ of error sued out. [49 Fed. 259; 4 U. S. App. 98] 1: 241  
 As to organization of county. [60 Fed. 55; 16 U. S. App. 656, 709] 8: 455  
 That county officers faithfully discharged duties when issuing bonds. [97 Fed. 270] 38: 167  
 Of indebtedness of county, by issuance of warrants. [88 Fed. 749; 60 U. S. App. 38] 32: 101  
 In favor of plaintiff suing on county warrants, by introducing same and proving ownership. [90 Fed. 575; 62 U. S. App. 255] 33: 181  
 That postmaster had on hand balance shown when account settled. [70 Fed. 581; 44 U. S. App. 171] 17: 283  
 That governor had all necessary papers to act on in extradition proceedings. [63 Fed. 249; 25 U. S. App. 22; 28 L. R. A. 801] 11: 165  
**As to authority of municipal officers to execute contracts.**  
 [59 Fed. 756; 19 U. S. App. 431] 8: 253  
 That statutory limit of indebtedness not exceeded. [71 Fed. 341; 37 U. S. App. 481] 18: 61  
**As to authority to make Mexican grant, from fact of making.**  
 [61 Fed. 6; 13 U. S. App. 248] 9: 338  
 That signature to certificate by secretary of foreign government genuine. [93 Fed. 899] 35: 646  
 In favor of surveyor general's certificate as to value of labor and improvements on mining claim. [83 Fed. 188; 48 U. S. App. 542] 27: 509  
**As to liquidation by collector of customs, within a year after entry.**  
 [74 Fed. 549; 38 U. S. App. 647] 20: 652  
**As to correctness of collector's classification of imports.**  
 [67 Fed. 323; 35 U. S. App. 89] 14: 399  
 That decision by assistant secretary as to duties was lawful. [51 Fed. 868; 6 U. S. App. 128] 2: 526  
 That patent to mining claim was correctly issued, how overcome. [83 Fed. 188; 48 U. S. App. 542] 27: 509

**EVIDENCE—continued.****As to knowledge; notice.**

- Of employee's knowledge of dangerous defect in roadbed, when exists. [87 Fed. 849; 58 U. S. App. 377] 31: 255
- Of servant's knowledge of defect or danger, see Note, 38: 322
- Of knowledge of defect in car, not overcome by employing competent inspector. [94 Fed. 781] 37: 1
- Of company's knowledge of defect in car, overcoming, employment of competent car inspectors. [82 Fed. 720; 54 U. S. App. 222] 27: 333
- That purchaser of note knew of existing defenses. [71 Fed. 489; 34 U. S. App. 472] 19: 94
- From inadequate consideration, as to knowledge of infirmities of title. [51 Fed. 355; 10 U. S. App. 86] 2: 265
- Of bank's notice of transfer of stock. [73 Fed. 136; 41 U. S. App. 95] 19: 406
- That knowledge of conveyance would have affected action of creditors. [53 Fed. 430; 2 U. S. App. 363] 3: 585
- Purchasers presumed to know when parties have equal right to use of same name for products. [97 Fed. 785] 38: 413
- As to knowledge of custom in marine insurance. [54 Fed. 839; 6 U. S. App. 549] 4: 600
- Of attorney's knowledge of client's insolvency when making loan. [87 Fed. 275; 58 U. S. App. 261] 30: 640

**As to instruments and contracts and rights under—In general.**

- Of correctness of stated account. [91 Fed. 543; 62 U. S. App. 368] 33: 663
- As to surety's consent to change of agreement. [61 Fed. 77; 17 U. S. App. 442, 463] 9: 366
- That contract expressed true agreement, where testimony of parties in direct conflict. [90 Fed. 451; 61 U. S. App. 446] 33: 595
- As to validity of contract between parties in confidential relations. [97 Fed. 367] 38: 592
- That will, under which acts of ownership exercised for one hundred years, duly probated. [93 Fed. 899] 35: 646
- Against violation of usury law, where notes bear lawful interest on face. [69 Fed. 759; 32 U. S. App. 650] 16: 387
- Of notice of acceptance of guaranty. [91 Fed. 481; 63 U. S. App. 279] 33: 646
- Of validity of separation agreement. [97 Fed. 367] 38: 592
- Presumption of validity of bond available to transferee from bona fide purchaser. [97 Fed. 270] 38: 167
- That county refunding bonds issued for valid outstanding indebtedness and that indebtedness not increased. [100 Fed. 337] 40: 391
- As to agreement to return advance on rescission of sale. [54 Fed. 653; 13 U. S. App. 23] 4: 547
- That bill of sale intended as mortgage. [93 Fed. 309] 35: 306
- Of delivery of recorded deed. [65 Fed. 441; 24 U. S. App. 573] 13: 1
- Of delivery of bond from acts of parties. [97 Fed. 859] 38: 449
- That absolute deed intended as mortgage. [93 Fed. 309] 35: 306

**—Insurance.**

- That insured did not kill himself. [73 Fed. 444; 44 U. S. App. 492] 19: 519
- As to correctness of abstract of application and medical examination in policy of life insurance. [86 Fed. 102; 58 U. S. App. 482] 29: 596
- Of waiver of condition against additional insurance. [66 Fed. 490; 30 U. S. App. 127] 14: 33
- From affidavit, as to addressing and mailing notice of premium, rebutting. [81 Fed. 796; 48 U. S. App. 482] 26: 620

**EVIDENCE—continued.****As to patents.**

As to invention, from grant of patent.

[80 Fed. 540; 53 U. S. App. 234] 25: 625

Of invention arising from granting of patents. [100 Fed. 465] 40: 496

Of validity arising from granting of patent where question of invention doubtful. [97 Fed. 950] 38: 573

Of privity between assignor and user of patent, estoppel.

[60 Fed. 283; 21 U. S. App. 98] 8: 622

What presumed in favor of assignee, as against assignor.

[99 Fed. 90] 39: 426

That article adapted only for use in patented combination is intended for that purpose. [80 Fed. 712; 54 U. S. App. 1] 26: 107

Of patentable difference between two machines, by granting patent for both.

[87 Fed. 885; 57 U. S. App. 310] 31: 265

Of patentable difference, by issuance of subsequent patent.

[69 Fed. 148; 29 U. S. App. 715] 16: 185

[69 Fed. 405; 37 U. S. App. 371] 16: 293

Of diversity of two patents apparently describing and claiming same article.

[90 Fed. 415; 61 U. S. App. 291] 33: 141

**As to acts of corporation and corporate officers.**

From acts or contracts by corporation as to existence of other acts necessary to make operative. [97 Fed. 145] 38: 84

As to payment of a tax essential to validity of an increase of capital stock of a corporation. [79 Fed. 10; 47 U. S. App. 605; 38 L. R. A. 616] 24: 425

Of corporate resolution for sale of land, from regular and formal execution of deed by trustees. [73 Fed. 945; 36 U. S. App. 702] 20: 122

Of ratification by corporation of general manager's agreement to submit to arbitration. [72 Fed. 361; 43 U. S. App. 1] 18: 590

As to acts of corporate directors elected by single stockholder.

[91 Fed. 299, 321; 62 U. S. App. 49, 697] 33: 517

That books of national bank, containing record of daily business, properly kept. [97 Fed. 35] 38: 37

As to place of reorganization of corporation contemplated by contract.

[85 Fed. 345; 54 U. S. App. 568] 29: 185

That person stockholder, by entry of his name in corporate books.

[88 Fed. 207; 59 U. S. App. 555] 31: 477

That selling price of stock was par value.

[98 Fed. 785] 39: 286

That subscriber to increase of capital stock assented to issue to him of original stock, where same retained for three years without objection.

[99 Fed. 801] 40: 93

**As to sale and transfer by executor or administrator.**

As to regularity of administrator's transfer of land certificate.

71 Fed. 618; 30 U. S. App. 612] 18: 280

In favor of titles acquired under administrator's sales.

[81 Fed. 784; 52 U. S. App. 328] 26: 608

None, of nonexistence of debts, justifying executor in exercising power to sell for debts. [95 Fed. 585] 37: 177

That sale of land to pay debts, valid, though made seven years after testator's death. Id.

**As to intent, malice, fraud.**

Of intention to dedicate land for street.

[90 Fed. 691; 61 U. S. App. 224] 33: 237

That trespass intentional, where ordinary care to ascertain boundary not used.

[93 Fed. 166] 35: 252

Of malice, from publication of libel.

[94 Fed. 762] 36: 475



## EVIDENCE—continued.

Of fraud, in excessive mortgage by failing debtor.

[54 Fed. 606; 12 U. S. App. 174] 4: 554

**As to care, negligence; existence of defects.**See also *supra*, **Knowledge; notice.**

As to precedence, at intersection of two street railroads.

[82 Fed. 158; 51 U. S. App. 503] 27: 136

Of negligence, from running train in excess of speed fixed by city ordinance.

[91 Fed. 466; 63 U. S. App. 429] 33: 633

Of carrier's responsibility for damage to goods in shipment.

[74 Fed. 413; 38 U. S. App. 356] 20: 486

Of negligence, from fire started by railway engine

[92 Fed. 494] 34: 497

As to negligence, from collision of trains at crossing.

[49 Fed. 209; 4 U. S. App. 109] 1: 231

As to negligence of master, from fact of injury to servant.

[80 Fed. 865; 53 U. S. App. 291] 26: 201

Of negligence, from killing of stock by railroad company.

[49 Fed. 798; 4 U. S. App. 243] 1: 432

[49 Fed. 800; 4 U. S. App. 246] 1: 435

Of carrier's liability for injury to passenger without fault.

[87 Fed. 149; 58 U. S. App. 131] 32: 19

Of negligence of tug, from breaking of chock through which tow line passes.

[87 Fed. 938; 59 U. S. App. 439] 31: 308

Of negligence of tug, from fact of injury to tow.

[80 Fed. 153; 53 U. S. App. 189] 25: 318

As to defect in appliance, from breaking thereof.

[59 Fed. 479; 20 U. S. App. 212] 8: 185

Of seaworthiness of ship.

[73 Fed. 844; 39 U. S. App. 219] 20: 61

Of unseaworthiness of vessel, from springing leak soon after leaving port.

[74 Fed. 413; 38 U. S. App. 356] 20: 486

Of unseaworthiness of vessel, from leak soon after sailing.

[94 Fed. 180] 36: 135

Of employee's assuming risks incident to defective roadbed.

[87 Fed. 849; 58 U. S. App. 377] 31: 255

That deceased stopped, looked, and listened before going on track at crossing.

[84 Fed. 93; 54 U. S. App. 550] 29: 81

Of carrier's liability to passenger exercising reasonable care.

[92 Fed. 59; 63 U. S. App. 711] 34: 207

**Collision cases.**

As to fault by one vessel, when other clearly proved in fault.

[76 Fed. 877; 33 U. S. App. 717] 22: 597

Collision case, when one vessel clearly at fault.

[74 Fed. 899; 33 U. S. App. 510] 21: 162

That moving vessel at fault, in collision with anchored vessel.

[81 Fed. 227; 39 U. S. App. 638] 26: 338

That vessel failing to stand by after collision was at fault, extent of.

[80 Fed. 998; 42 U. S. App. 431] 26: 301

That light burning on vessel at midnight was burning four hours later.

[71 Fed. 989; 33 U. S. App. 389] 18: 406

**As to rights in property, generally.**

As to selection of indemnity lands under railroad grant.

[49 Fed. 529; 7 U. S. App. 33] 1: 345

That cotenant holds in cotenant's right.

[70 Fed. 529; 37 U. S. App. 1, 199] 17: 251

That adverse possession of land for sixty years after conveyance to trustee rested on grant.

[90 Fed. 182; 61 U. S. App. 548] 32: 564

**EVIDENCE—continued.**

Of abandonment of right to enter land for mining purposes, from exercise of similar rights by grantor. [93 Fed. 1] 35: 177

Of renunciation of community property by divorced wife. [94 Fed. 283] 36: 248

Of partition, from long occupation in severalty. [70 Fed. 561; 37 U. S. App. 436] 17: 217

Of ownership from production of municipal bonds by plaintiff's counsel. [99 Fed. 202] 39: 462

Of ownership from possession of municipal bonds payable to bearer. [99 Fed. 905] 40: 161

**As to guilt or innocence.**

That man of good reputation not guilty of criminal charge. [94 Fed. 762] 36: 475

Of innocence until guilt proved. Id.

**III. BURDEN OF PROOF.**

That damages sued for not paid. [97 Fed. 882] 38: 528

As to proof of jurisdictional averments of citizenship. [83 Fed. 225; 49 U. S. App. 681] 28: 399

In action to recover overdraft. [63 Fed. 773; 26 U. S. App. 237] 11: 415

Necessity of proving contract and breach, in action for breach. [92 Fed. 290] 34: 351

Of redelivery of securities delivered to bank. [97 Fed. 739] 38: 399

To show error in bill of particulars. [52 Fed. 876; 8 U. S. App. 111] 3: 325

On buyer, to prove source of defects in machine. [56 Fed. 437; 12 U. S. App. 295] 5: 538

Special circumstances preventing stopping of train. [54 Fed. 481; 10 U. S. App. 640] 4: 454

[54 Fed. 485; 10 U. S. App. 647] 4: 458

[54 Fed. 486; 12 U. S. App. 172] 4: 459

[54 Fed. 485; 10 U. S. App. 650] 4: 459

[54 Fed. 486; 12 U. S. App. 170] 4: 460

To show cable not obstruction to navigation. [59 Fed. 365; 20 U. S. App. 247] 8: 152

Necessity of proving allegation that bank officer's unlawful diversion of funds fraudulent. [94 Fed. 582] 36: 402

Wrongful intent of bank president in making false entries in books in both of two ways charged. [97 Fed. 208] 38: 115

On bank directors, of exonerating themselves from liability for losses. [91 Fed. 587; 61 U. S. App. 372; 44 L. R. A. 761] 33: 222

Unnecessary allegation that money embezzled by bank officer lawful legal tender money. [91 Fed. 494; 62 U. S. App. 550] 33: 652

Noncompliance of railroad company with statutory requirement as to filing survey of line in action on railroad aid bonds. [97 Fed. 145] 38: 84

Of proving that equality in freight rates is merely colorable. [74 Fed. 803; 43 U. S. App. 308] 21: 103

In proceedings to limit liability of owner of vessel. [56 Fed. 111; 5 U. S. App. 382] 5: 438

As to want of reasonable diligence in discharging vessel. [77 Fed. 919; 40 U. S. App. 157; 35 L. R. A. 623] 23: 564

Shifting, by proof of delay beyond customary time. Id.

On owners of vessel, to show that stevedore knew of terms of charter party. [57 Fed. 224; 13 U. S. App. 459] 6: 313

To prove title of defendant in slander of title. [57 Fed. 333; 13 U. S. App. 399] 6: 358

**EVIDENCE—continued.**

- Of change in long established usage as to sixty-day sight drafts on exchange between London and New York. [99 Fed. 1004] 40: 217
- Necessity of proving local laws of various tribes in Indian territory. [86 Fed. 571; 57 U. S. App. 500] 30: 257
- To show that damages in collision case might have been mitigated. [79 Fed. 445; 50 U. S. App. 11] 25: 32
- That land of railroad company did not pass on general foreclosure sale. [66 Fed. 224; 23 U. S. App. 549] 13: 410
- On ship, to separate from entire damage to cargo part damaged by sea peril. [71 Fed. 728; 38 U. S. App. 1] 18: 226
- That obscure telegram not delivered would have been understood. [68 Fed. 72; 32 U. S. App. 347] 15: 231
- As to particular application of payments. [75 Fed. 554; 43 U. S. App. 452] 23: 302
- Divorced wife must show amount of community funds expended, to recover share in increased value of husband's separate property. [94 Fed. 283] 36: 248
- As to existence of corporation. [59 Fed. 746; 19 U. S. App. 336] 8: 244  
[76 Fed. 718; 40 U. S. App. 471] 22: 512
- On importer, to show wrongful classification of goods. [91 Fed. 647; 62 U. S. App. 350] 34: 37
- As to incorrectness of collector's classification of imports. [67 Fed. 323; 35 U. S. App. 89] 14: 399
- That plaintiff could have exchanged securities for specified bonds. [74 Fed. 177; 38 U. S. App. 665] 20: 371
- Necessity of showing that town incorporated, to recover for injuries from failure to give signals at railroad crossing. [92 Fed. 470] 34: 470
- As to malice respecting privileged communications. [78 Fed. 460; 46 U. S. App. 673] 24: 169
- To show settler's right to cut and sell timber on land entered. [64 Fed. 667; 29 U. S. App. 32] 12: 451
- As to validity of entry of public land canceled for fraud. [64 Fed. 553; 29 U. S. App. 12] 12: 293
- Of suicide of insured. [100 Fed. 582] 40: 564

**As to negligence; proper condition—In general.**

- Of negligence, where passenger has been injured, see Note, 32: 23
- Necessity of proving alleged negligence of winchman, in action for personal injuries. [93 Fed. 592] 35: 467
- To show negligence, in case of accident by breaking of chock through which tow line passes. [87 Fed. 938; 59 U. S. App. 439] 31: 308
- On railroad company, to show switchman instructed as to manner of uncoupling cars. [50 Fed. 725; 6 U. S. App. 86] 1: 633
- Of notice to railroad company of custom of postal employees to throw mail from moving train. [86 Fed. 422; 58 U. S. App. 349] 30: 157
- That any given rate of speed of logging train derailed was dangerous. [72 Fed. 739; 44 U. S. App. 347] 19: 168
- As to character of switch discontinued as dangerous. [65 Fed. 736; 31 U. S. App. 92] 13: 95
- As to negligence of towing vessel. [66 Fed. 571; 29 U. S. App. 482] 13: 641
- As to causal relation between negligence and injury. [76 Fed. 127; 40 U. S. App. 214] 22: 101
- To prove master's negligence proximate cause, concurring negligence. [57 Fed. 915; 12 U. S. App. 688] 6: 636
- That boiler explosion resulted from particular defects. [70 Fed. 531; 30 U. S. App. 549] 17: 524

## EVIDENCE—continued.

**Collision cases.**

- As to vessel responsible for collision. [67 Fed. 612; 35 U. S. App. 165] 14: 573
- Of showing that want of proper fog horn did not contribute to collision.  
[75 Fed. 424; 33 U. S. App. 543] 21: 424
- To show that collision not due to failure to stop engines at once on hearing fog signal of other vessel. [98 Fed. 750] 39: 261
- That proceeding at lawful speed in fog could not have caused collision.  
[98 Fed. 133] 38: 670
- As to precaution by steamer to keep out of way of tug with tows.  
[74 Fed. 572; 42 U. S. App. 100] 20: 660
- That tow not handled with ordinary degree of skill by tug.  
[99 Fed. 1004] 40: 212
- On steamer, to show that sail was at fault for collision.  
[70 Fed. 113; 34 U. S. App. 261; 30 L. R. A. 336] 17: 1
- On manifest wrongdoer in collision case, division of damages.  
[62 Fed. 71; 22 U. S. App. 242] 10: 262
- As to cause of sudden sheer from course indicated by vessel.  
[91 Fed. 547; 62 U. S. App. 88] 33: 667
- That change of course of schooner after exchanging signals with steamer not contribute to collision. [89 Fed. 757; 50 U. S. App. 435] 32: 331
- That breaking away and drifting of vessel into other excusable.  
[100 Fed. 332] 40: 386
- On part of vessel shown to be in fault as to other vessel's negligence.  
[100 Fed. 128] 40: 312

**—Damage to goods or cargo.**

- That loss or damage caused by peril of the sea, see Note, 19: 476
- Seaworthiness of vessel at time of sailing. [99 Fed. 1005] 40: 221
- To show seaworthiness of vessel springing leak, from which cargo damaged.  
[92 Fed. 1018] 35: 159
- As to good condition of center board trunk of vessel, by springing of leak in which cargo damaged. [74 Fed. 413; 38 U. S. App. 356] 20: 486
- As to cause of damage to goods in shipment.  
[67 Fed. 794; 35 U. S. App. 173] 14: 650
- That damage to goods arose from cause for which carrier not responsible.  
[74 Fed. 413; 38 U. S. App. 356] 20: 486
- That damage to oil must have been caused by a sea peril.  
[73 Fed. 352; 38 U. S. App. 369] 19: 449
- To show that damage to goods arose from excepted peril.  
[51 Fed. 605; 1 U. S. App. 251] 2: 399
- To show that damage to goods caused by inherent defects or by sweat of ship.  
[55 Fed. 525; 2 U. S. App. 582] 5: 207
- That damage to ship's cargo resulted from cause excepted in bill of lading.  
[94 Fed. 180] 36: 135
- As to how leak in ship causing damage to cargo arose. Id.
- That breakage due to carrier's negligence.  
[90 Fed. 114; 61 U. S. App. 147] 32: 534

**—Contributory negligence.**

- Generally. [76 Fed. 127; 46 U. S. App. 214] 22: 101
- Property destroyed by fire, shifting. [51 Fed. 658; 7 U. S. App. 254] 2: 446
- Effect of allegation as to due care. [85 Fed. 945; 50 U. S. App. 297] 29: 500
- Of person killed on railroad track. [83 Fed. 652; 49 U. S. App. 700] 27: 663
- Miscalculating distance. [63 Fed. 942; 24 U. S. App. 176] 11: 521
- How burden discharged. [54 Fed. 301; 6 U. S. App. 381] 4: 346  
[61 Fed. 573; 15 U. S. App. 400] 9: 629

**EVIDENCE—continued.****As to bona fides.**

Burden of proving buyer's notice of seller's insolvency, or fraudulent attempt.  
[57 Fed. 10; 13 U. S. App. 222, 314] 6: 231

Of showing notice of unrecorded mortgage.

[53 Fed. 927; 9 U. S. App. 370] 4: 111

As to good faith of mortgage, shifting.

[57 Fed. 685; 18 U. S. App. 256; 24 L. R. A. 417] 6: 508

As to bona fides of junior purchaser whose deed is first recorded.

[82 Fed. 381; 53 U. S. App. 499; 40 L. R. A. 393] 27: 305

Of showing bona fides in purchase of railroad bonds.

[75 Fed. 433; 43 U. S. App. 550] 22: 378

**In patent cases.**

Want of invention, letters patent prima facie evidence.

[53 Fed. 257; 7 U. S. App. 424] 3: 525

Priority of invention.

[67 Fed. 121; 31 U. S. App. 462] 14: 232

That action of patent office might have been hastened.

[68 Fed. 542; 33 U. S. App. 236] 15: 569

To show that portion of saving from use of patented machine results from  
superadded improvement.

[76 Fed. 227; 45 U. S. App. 105] 22: 138

**In ejectment.**

As to common grantor, admission in answer.

[59 Fed. 977; 15 U. S. App. 348] 8: 426

As to defense, shifting.

[53 Fed. 58; 3 U. S. App. 231] 3: 426

As to possession by predecessor of plaintiff.

[51 Fed. 932; 2 U. S. App. 310] 2: 546

**As to maritime lien.**

That persons furnishing supplies to ship in foreign port relied on owner's  
credit.

[68 Fed. 926; 30 U. S. App. 318] 15: 675

As to necessity for credit of ship to which supplies furnished in foreign port.

[72 Fed. 793; 38 U. S. App. 344] 19: 194

**As to contracts and instruments; rights under—In general.**

Of usury in note, on maker.

[94 Fed. 913] 37: 339

As to alteration of note.

[73 Fed. 925; 34 U. S. App. 688] 20: 230

That note was made for accommodation.

[70 Fed. 567; 37 U. S. App. 419] 17: 222

As to invalidity of note.

[73 Fed. 925; 34 U. S. App. 688] 20: 230

Invalidity of note for purchase price of cotton to be delivered in future, burden  
of proving intent not to receive under contract.

[100 Fed. 373] 40: 416

That surety on note released, or that note not accepted.

[92 Fed. 828] 35: 23

As to surety's consent to change of agreement.

[61 Fed. 77; 17 U. S. App. 442, 463] 9: 366

Unnecessary to prove execution of forthcoming bond by obligors against whom  
suit on, dismissed.

[98 Fed. 793] 39: 294

That transfer of bank stock by pledgee to third person to be held as security  
for original debt made without pledgeor's consent.

[98 Fed. 688] 39: 231

That separation agreement fair and just to wife.

[97 Fed. 367] 38: 592

Unnecessary to show that agent's authority to execute sealed contract was  
under seal, where seal on contract not required.

[98 Fed. 692] 39: 235

Ability to pay purchase price at time and place agreed on for delivery of ves-  
sel.

[97 Fed. 477] 38: 293

On intervener in attachment, to show validity of assignment.

[48 Fed. 152; 4 U. S. App. 32] 1: 56

To explain diminution of property before assignment for creditors.

[50 Fed. 898; 4 U. S. App. 399] 2: 76

**EVIDENCE—continued.****—Insurance.**

- As to suicide of insured, see Notes, 10: 627; 28: 286  
 That beneficiary had insurable interest. [68 Fed. 873; 32 U. S. App. 444] 16: 51  
 As to truth of representations in application for policy. [73 Fed. 81; 38 U. S. App. 583] 19: 264  
 That insured committed suicide. [94 Fed. 751] 36: 467  
 That accident was sole cause of insured's death. [73 Fed. 774; 36 U. S. App. 658] 20: 3  
 As to materiality of misrepresentation or concealment by applicant for insurance. [72 Fed. 413; 37 U. S. App. 692; 38 L. R. A. 33] 19: 286  
 That injury to insured accidental. [86 Fed. 282; 57 U. S. App. 446] 30: 48

**IV. BEST AND SECONDARY EVIDENCE.**

- Possession of document by attorney not sufficiently shown to be counsel for party. [70 Fed. 960; 30 U. S. App. 516] 17: 542  
 Oral testimony to prove adoption of by-law by insurance association. [98 Fed. 66] 38: 654  
 Estimates of cost of work made without personal knowledge from reports not designed for the purpose. [73 Fed. 984; 46 U. S. App. 52] 20: 233  
 That bounty warrant was issued to "J. C. L.," while name "J. L." was on muster roll. [72 Fed. 142; 30 U. S. App. 637] 18: 487  
 Statutory method for supplying lost court record not exclusive. [69 Fed. 297; 25 U. S. App. 368] 16: 227  
 To show existence of partnership created by writing. [73 Fed. 81; 38 U. S. App. 583] 19: 264  
 Testimony of persons based on record made by them from reports then known to be correct. [68 Fed. 864; 30 U. S. App. 454] 16: 42  
 Parol evidence of information, by questioning attachment debtor to show insolvency. [66 Fed. 899; 29 U. S. App. 227] 14: 166  
 Of proceedings of school board, failure to record motion and vote. [80 Fed. 366; 49 U. S. App. 271] 25: 492  
 Records of meetings of township board contained in highway commissioner's record kept by clerk of former board. [99 Fed. 202] 39: 462  
 Oral evidence of prior state of art in patent suit. [67 Fed. 917; 35 U. S. App. 221] 15: 73  
 Of conviction of burglary. [59 Fed. 75; 16 U. S. App. 277] 8: 6  
 Of subscription to corporate stock. [51 Fed. 409; 4 U. S. App. 524] 2: 314  
 As to results of seller's tests of machine. [56 Fed. 786; 9 U. S. App. 550] 6: 121  
 As to authority to make demand on defaulting postmaster. [57 Fed. 828; 15 U. S. App. 158] 6: 602  
 As to eviction from mine in Mexico. [54 Fed. 848; 2 U. S. App. 568] 4: 609  
 Evidence of contents of letter not proved to have been written and lost. [59 Fed. 83; 16 U. S. App. 311] 8: 14  
 As to demand for swamp land deeds, record, parol evidence. [51 Fed. 487; 10 U. S. App. 227] 2: 343  
 Certificate issued by alien's government sole evidence of right to enter United States. [100 Fed. 609] 40: 618

**Books and accounts.**

- Book showing amount of logs scaled, from memoranda furnished by third person. [64 Fed. 314; 22 U. S. App. 646] 12: 129  
 Entries in bank ledger made from original memoranda furnished by person since deceased. [72 Fed. 470; 38 U. S. App. 254] 18: 644  
 C. C. A.—21.

**EVIDENCE—continued.**

- Books showing measurement of logs, without producing persons measuring.  
[69 Fed. 773; 32 U. S. App. 520] 16: 400
- Bank teller's book kept by person since deceased.  
[72 Fed. 470; 38 U. S. App. 254] 18: 644
- Laborer's time book, without evidence of person keeping.  
[66 Fed. 522; 30 U. S. App. 55] 13: 620
- Account books of municipal corporations.  
[68 Fed. 849; 25 U. S. App. 354] 16: 28

**Copies.**

- Copy of lost deed as secondary evidence.  
[52 Fed. 838; 8 U. S. App. 229] 3: 294
- Copy of memoranda after their destruction, without showing their correctness.  
[68 Fed. 509; 35 U. S. App. 421] 15: 553

**V, HEARSAY; ADMISSIONS; DECLARATIONS; RES GESTÆ.**

Privileged Communications, see WITNESSES.

- As to birth of posthumous child. [56 Fed. 707; 13 U. S. App. 495] 6: 92
- Hearsay incompetent to prove past occurrence.  
[73 Fed. 774; 36 U. S. App. 658] 20: 3
- Reputation, financial standing. [57 Fed. 10; 13 U. S. App. 222, 314] 6: 231

**Declarations and admissions—In general.**

- Offer to compromise, as admission of execution of contract.  
[61 Fed. 804; 18 U. S. App. 692] 10: 83

**—Admission by silence.**

- Of agent competent to deny. [83 Fed. 989; 55 U. S. App. 221] 28: 250
- Statement of fact by one party not denied by other.  
[75 Fed. 912; 43 U. S. App. 739] 21: 553
- Unanswered statements in letters as admissions. Id.

**—As to boundary; declarations of decedent.**

- Knowledge as to location of section lines, derived from third person.  
[66 Fed. 280; 30 U. S. App. 90] 13: 436
- Of deceased person as to boundary. [90 Fed. 238; 61 U. S. App. 647] 33: 47
- Of deceased surveyor to establish boundary.  
[90 Fed. 632; 61 U. S. App. 427] 33: 199
- Of decedent, to prove location of boundary line.  
[68 Fed. 336; 25 U. S. App. 345] 15: 466

**—Of party, generally.**

See also *infra*, **Res gestæ.**

- Against interest. [85 Fed. 539; 56 U. S. App. 556] 29: 333
- Statements by plaintiff arrested for stealing public records, as to his purpose.  
[94 Fed. 52] 36: 75
- Of insured, acknowledging liability on premium note to show acceptance of policy. [87 Fed. 637; 57 U. S. App. 18] 31: 172
- Of party executing instrument, as to its character.  
[58 Fed. 670; 19 U. S. App. 229] 7: 426
- By one in possession of land, as to nature of claim.  
[71 Fed. 127; 36 U. S. App. 307] 18: 1
- Describing one's self as citizen of certain state, in executing legal instrument.  
[80 Fed. 504; 49 U. S. App. 358] 25: 600
- Right of accused to admission of full conversation in which declarations were made. [86 Fed. 106; 52 U. S. App. 647] 29: 600
- Testimony by physician as to statements by patient.  
[61 Fed. 573; 15 U. S. App. 400] 9: 629  
[51 Fed. 649; 10 U. S. App. 209] 2: 437

**EVIDENCE—continued.**

Statements by plaintiff to medical expert to qualify latter as witness.

[70 Fed. 21; 28 U. S. App. 569] 16: 601

**—Of third person, generally.**

See also *infra*, **Res gestæ**.

Shown by affidavit, taken under stipulation.

[57 Fed. 524; 14 U. S. App. 569] 6: 466

By insured, of intention to commit suicide.

[73 Fed. 444; 44 U. S. App. 492] 19: 519

Personal injuries, subsequent statements by engineer.

[55 Fed. 595; 12 U. S. App. 132] 5: 220

Of witness for prosecution, as to receiving reward if defendant convicted.

[89 Fed. 954; 61 U. S. App. 169] 32: 449

Authority of agent to make admissions.

[75 Fed. 818; 45 U. S. App. 84] 21: 530

Of alleged agent, to establish agency.

[93 Fed. 936] 36: 46

Of agent, to show waiver of settlement made by principal.

[83 Fed. 437; 55 U. S. App. 113] 28: 358

By silence of agent.

[83 Fed. 989; 55 U. S. App. 221] 28: 250

By president of corporation, whose authority to make not shown.

[93 Fed. 731] 35: 556

Breach of warranty, statement by agent of purchaser's vendee.

[57 Fed. 467; 16 U. S. App. 30] 6: 428

Of wife, to show failure to perform particular act.

[74 Fed. 403; 42 U. S. App. 1] 20: 476

Admission by widow in action by administrator on life insurance policy payable to estate.

[98 Fed. 251] 39: 56

Value of legal services.

[56 Fed. 104; 12 U. S. App. 351] 5: 432

On former trial, signed by attorney of record.

[90 Fed. 238; 61 U. S. App. 647] 33: 47

Conversations by guarantors with persons procuring the guaranty.

[93 Fed. 171] 35: 256

Of alleged coconspirators.

[89 Fed. 954; 61 U. S. App. 169] 32: 449

Allegation of ownership in petition on county bonds payable to bearer inadmissible to impeach ownership of plaintiff in other action on same bonds.

[99 Fed. 905] 40: 161

**—Of former owner.**

As to having given land to pay debt. [71 Fed. 127; 36 U. S. App. 307] 18: 1

Of grantor, against interest, when admissible against grantee.

[79 Fed. 736; 49 U. S. App. 174] 25: 181

To affect validity of sale in absence of fraud or authority.

[67 Fed. 990; 32 U. S. App. 410] 15: 142

**Res gestæ.**

Statement by section foreman as to killing of colts.

[62 Fed. 116; 27 U. S. App. 71] 10: 300

Statement by agent as to condition of engines.

[56 Fed. 808; 9 U. S. App. 564] 6: 147

Statements of conductor immediately after injury.

[78 Fed. 693; 47 U. S. App. 339] 24: 280

Statement by injured person, immediately after accident, as to its cause.

[83 Fed. 989; 55 U. S. App. 221] 28: 250

Statement by section man killed by landslide shortly before its occurrence, of danger of one at any time.

[97 Fed. 255] 38: 151

Statement of servant as to how he came to be in place where injured.

[67 Fed. 209; 28 U. S. App. 375] 14: 368

Statement by person two hours after injury to him.

[73 Fed. 774; 36 U. S. App. 658] 20: 3



**EVIDENCE—continued.**

Statement of defendant's foreman when former instance of negligence reported.	[65 Fed. 941; 31 U. S. App. 192]	13: 222
Statement of insured as to cause of injury.	[64 Fed. 689; 24 U. S. App. 364]	12: 392
Transactions prior to, or unconnected with, alleged parol contracts.	[72 Fed. 236; 25 U. S. App. 595]	18: 527
Statements of agent while putting up range which set fire to house.	[80 Fed. 474; 42 U. S. App. 449]	25: 570
Statements of conductor, as to passenger whose sanity is questioned.	[77 Fed. 150; 40 U. S. App. 554]	23: 100
Admissibility of, in proof of conspiracy.	[76 Fed. 140; 40 U. S. App. 173]	22: 104
Declarations ten days after delivery of policy as <i>res geste</i> .	[87 Fed. 637; 57 U. S. App. 18]	31: 172

**VI. OPINION EVIDENCE.**

Expert testimony as to unfair competition in trade, see	Note, 20:	180
Expert may testify on point to be decided by jury.	[94 Fed. 329]	36: 364
When jury can draw their own inferences.	[58 Fed. 945; 16 U. S. App. 290]	7: 581
Excluding, in case of doubt as to admissibility.	[88 Fed. 243; 60 U. S. App. 10]	31: 515
Fully covering ground of inquiry for jury's decision.	[91 Fed. 85; 62 U. S. App. 287]	33: 347
Conclusions from many minor details.	[59 Fed. 75; 16 U. S. App. 277]	8: 6
Speculative opinion based upon an opinion, what is.	[84 Fed. 870; 55 U. S. App. 427]	28: 544
As to familiarity of other engineers with condition of road.	[49 Fed. 538; 4 U. S. App. 221]	1: 354
As to identity of person.	[75 Fed. 254; 41 U. S. App. 392]	21: 325
As to meaning of entries in national bank report.	[97 Fed. 35]	38: 37
As to obstructions to view at place of accident.	[68 Fed. 148; 32 U. S. App. 253]	15: 327
As to course of ordinarily prudent business man.	[57 Fed. 10; 13 U. S. App. 222, 314]	6: 231
As to whether burning building still standing when seen.	[88 Fed. 243; 60 U. S. App. 10]	31: 515
Whether fall of building preceded or followed fire.	[91 Fed. 85; 62 U. S. App. 287]	33: 347
<b>Qualifications of witness.</b>		
Discretionary with trial judge.	[61 Fed. 752; 21 U. S. App. 228]	9: 623
Test of, extent of witness's knowledge.	[87 Fed. 125; 59 U. S. App. 318]	30: 572
Of persons working in starch factory and familiar with starch cartons, to point out difference between sample and articles furnished to purchaser.	[100 Fed. 595]	40: 577
As to classification of dutiable goods.	[55 Fed. 968; 14 U. S. App. 376]	5: 363
Number of horses satisfying requirements of contract, examination for another purpose.	[87 Fed. 125; 59 U. S. App. 318]	30: 572
Restaurant keeper competent, though not an expert, to testify as to value of articles of common use in his restaurant.	[100 Fed. 553]	40: 537
Value of goods, taking invoice and selling from stock.	[50 Fed. 737; 4 U. S. App. 406]	1: 642
Cost of machinery, engaging in mechanical pursuits, etc.	[53 Fed. 257; 7 U. S. App. 424]	3: 525

**EVIDENCE—continued.**

Engineer familiar with machinery causing accident, as to probable manner of occurrence. [99 Fed. 240] 39: 494

Experienced railroad engineer, familiar with track, as to likelihood of uneven track throwing coupling pin out on down grade. [97 Fed. 423] 38: 239

Effect of bridge and embankment to cause overflows, observation.

[54 Fed. 630; 2 U. S. App. 637; 13 U. S. App. 68] 4: 528

Characterizing conduct, little opportunity to observe, facts not detailed.

[61 Fed. 757; 27 U. S. App. 96] 10: 41

**Scientific works; mental and physical condition.**

Medical books as independent evidence of opinions therein expressed.

[79 Fed. 584, 40 U. S. App. 241; 40 L. R. A. 553] 25: 103

Reading medical works to jury to show probable effects of physical injury. Id.

Reading scientific books in support of opinion.

[83 Fed. 811; 51 U. S. App. 577; 40 L. R. A. 561] 28: 157

Nonprofessional witness, apparent sufferings and expressions.

[59 Fed. 75; 16 U. S. App. 277] 8: 6

Nonexpert evidence as to sanity of insured committing suicide.

[71 Fed. 843; 38 U. S. App. 37] 18: 332

**Hypothetical question.**

Omission of essential fact from question.

[83 Fed. 811; 51 U. S. App. 577; 40 L. R. A. 561] 28: 157

Not required to state the facts testified to.

[94 Fed. 329] 36: 364

Assuming existence of facts not proved.

[64 Fed. 689; 24 U. S. App. 364] 12: 392

**As to care or negligence; proper or improper construction.**

That revolving shafting is dangerous. [55 Fed. 932; 17 U. S. App. 22] 5: 326

Whether freight train sufficiently manned.

[61 Fed. 573; 15 U. S. App. 400] 9: 629

Possibility of discovering defect in appliance.

[56 Fed. 994; 12 U. S. App. 520] 6: 211

As to whether particular manner of doing work reasonably safe.

[74 Fed. 155; 36 U. S. App. 682] 20: 366

As to whether reasonable care exercised in selecting rope, by breaking of which servant killed.

[98 Fed. 49] 38: 641

As to whether such rope usual instrumentality for purpose to which applied. Id.

As to manning freight train, engineer and conductor.

[61 Fed. 573; 15 U. S. App. 400] 9: 629

Not competent to prove particular mode of coupling cars specially dangerous.

[63 Fed. 793; 24 U. S. App. 295] 11: 439

As to whether certain specified precautions should be taken in hoisting pipe.

[79 Fed. 896; 51 U. S. App. 81] 25: 216

As to ordinary construction of railroad.

[49 Fed. 538; 4 U. S. App. 221] 1: 354

As to whether rough and uneven condition of railroad track likely to throw coupling pin out while going down grade.

[97 Fed. 423] 38: 239

As to safe method of constructing railroad platform.

[76 Fed. 517; 46 U. S. App. 300] 22: 306

As to whether line of gas pipe was skilfully laid.

[73 Fed. 984; 46 U. S. App. 52] 20: 233

**As to value or amount of damage.**

As to value of or amount of damage to live stock, see Note, 32: 150

As to value of machine, after allowing for defects.

[77 Fed. 138; 40 U. S. App. 382] 23: 89

**EVIDENCE—continued.**

- As to value of article, without correct information from which to form opinion. [69 Fed. 798; 32 U. S. App. 554] 16: 425
- As to reasonable value of right to use invention. [74 Fed. 636; 41 U. S. App. 309] 20: 568
- As to value of stock of corporation in receiver's hands. [69 Fed. 798; 32 U. S. App. 554] 16: 425
- As to average assay value of samples of ore wrongfully removed from mine. [97 Fed. 413] 38: 228
- As to rental value of mills. [65 Fed. 52; 27 U. S. App. 583] 12: 511
- As to amount of damage suffered by cattle during delay in transportation. [78 Fed. 745; 49 U. S. App. 52] 24: 300
- As to extent of injury to cattle in shipment by collision. [87 Fed. 170; 58 U. S. App. 685] 32: 146
- As to extent cattle shipped would shrink in weight. [66 Fed. 868; 32 U. S. App. 60] 14: 153
- As to cause of death.**
- As to cause of death, conditions found in body. [58 Fed. 945; 16 U. S. App. 290; 22 L. R. A. 620] 7: 581
- Necessity of test to ascertain cause of death. Id.
- Asking physician whether autopsy reveals cause of death with certainty. Id.
- As to speed or distance.**
- Of plaintiff, as to speed of train which struck him. [87 Fed. 129; 59 U. S. App. 711] 30: 576
- As to distance at which cattle can be seen on track. [49 Fed. 347; 4 U. S. App. 121] 1: 286
- Legal question.**
- Insurance expert's opinion as to materiality of undisclosed or misrepresented fact. [72 Fed. 413; 37 U. S. App. 692; 38 L. R. A. 33] 19: 286
- As to what state party resides in. [80 Fed. 504; 49 U. S. App. 358] 25: 600
- On question of infringement of syllabi by digest paragraphs. [79 Fed. 750; 51 U. S. App. 216; 35 L. R. A. 400] 25: 648
- That bounty warrant was issued to "J. C. L." for term, while "J. L." appeared on the muster roll. [72 Fed. 142; 30 U. S. App. 637] 18: 487
- Expert evidence that omission of certain mechanism a "fatal fault" in invention patented. [94 Fed. 502] 37: 372
- Expert evidence that certain part of alleged infringing machine "exactly the nature of" certain part of plaintiff's. Id.

**VII. DOCUMENTS.****To Refresh Recollection, see WITNESSES.**

- Statute authorizing admission of unacknowledged agreements, to what actions applicable. [82 Fed. 381; 53 U. S. App. 499; 40 L. R. A. 393] 27: 305
- Construction of stipulation for admission of any document "proved or admitted" in prior action. [79 Fed. 906; 51 U. S. App. 204] 25: 227
- Private act of sale acknowledged under private signature of land on which taxes unpaid. [74 Fed. 616; 41 U. S. App. 39] 20: 563
- Petition filed in court by former railroad receivers to whom insurance policy issued. [89 Fed. 131; 59 U. S. App. 499] 32: 173
- Accident policies not within statute requiring copies of application, etc., to be attached to policy. [86 Fed. 567; 58 U. S. App. 76; 41 L. R. A. 194] 30: 253
- Application for accident insurance admissible, though copy not attached to policy. [94 Fed. 743] 38: 1
- Admissibility of certified copy of power of attorney in absence of certificate as to official character of officer. [80 Fed. 234; 49 U. S. App. 233] 25: 389

**EVIDENCE—continued.**

- Deed executed under power of attorney given by lunatic.  
[97 Fed. 12] 38: 25
- Deed from common grantor to third person not entitled to record to show outstanding title where.  
Id.
- Certificate of protest of note in Federal court.  
[69 Fed. 798; 32 U. S. App. 554] 16: 425
- Hospital record containing remarks by nurse regarding patient.  
[92 Fed. 884; 63 U. S. App. 157] 35: 78
- Rule for government of freight brakeman irrelevant in action for injury to foreman injured because of defect in brake.  
[100 Fed. 415] 40: 465
- Assessed valuation of taxable property to show that constitutional limitation exceeded in issuing bonds.  
[97 Fed. 270] 38: 167
- Subscription to corporate stock, change of corporate name.  
[51 Fed. 400; 4 U. S. App. 478] 2: 305
- Contract of corporation, proof of agent's authority.  
[61 Fed. 804; 18 U. S. App. 692] 10: 83
- Prior reports by president on prosecution for making false reports.  
[97 Fed. 35] 38: 37
- Bill of lading signed by captain.  
[86 Fed. 55; 57 U. S. App. 236] 29: 621
- Instrument without revenue stamp.  
[97 Fed. 460] 38: 281

**Judgments and judicial records.**

- Mode of authenticating judicial records.  
[76 Fed. 718; 40 U. S. App. 471] 22: 512
- Part or whole of record of other court.  
[51 Fed. 400; 4 U. S. App. 478] 2: 305
- Judicial record, introducing only part desired.  
[76 Fed. 718; 40 U. S. App. 471] 22: 512
- Record of suit for making fraudulent survey to prove correctness of survey.  
[68 Fed. 155; 31 U. S. App. 731] 15: 335
- Judgment against seller of machine, in action by him against his vendor.  
[91 Fed. 213; 50 U. S. App. 461] 33: 456
- Judgment appointing administrator *de bonis non*.  
[74 Fed. 601; 41 U. S. App. 381] 20: 548
- Record of judgment determining validity of will against privies.  
[68 Fed. 796; 30 U. S. App. 275] 15: 683
- Default judgment against railroad company to show priority over mortgage.  
[67 Fed. 84; 31 U. S. App. 387] 14: 314
- Transcript of record of justice's judgment, authentication of justice's signature necessary.  
[91 Fed. 969; 63 U. S. App. 656] 34: 147
- Transcript of record of justice's judgment, without proving facts essential to jurisdiction.  
Id.
- Exemplified copy of record containing judgment of one Federal court in other Federal court.  
[94 Fed. 750] 37: 388
- Record of judgment against railroad company for personal injuries, against purchaser on foreclosure.  
[70 Fed. 442; 25 U. S. App. 415; 30 L. R. A. 823] 17: 181
- Record of prior action by third person on same bonds inadmissible to impeach plaintiff's ownership.  
[99 Fed. 905] 40: 161
- Genuineness of purported decree confirming alleged grant by village alcalde.  
[61 Fed. 6; 13 U. S. App. 248] 9: 338
- Record of suit to set aside judgment, to show diligence in seeking relief from same.  
[94 Fed. 792] 36: 498
- Bill of exceptions in other suit between different parties.  
[92 Fed. 445; 63 U. S. App. 773] 34: 448
- Record of conviction of derailing train, in suit for personal injuries in wreck.  
[87 Fed. 420; 59 U. S. App. 55] 31: 157

**EVIDENCE—continued.****Official reports and records, generally.**

- Certified copy of record of lost deed, grantor's name misspelled.  
[53 Fed. 772; 2 U. S. App. 525] 3: 603
- Surveyor general's scale bill of logs. [56 Fed. 203; 12 U. S. App. 281] 5: 474
- Admissibility of certified copy of record to prove lost instrument.  
[80 Fed. 234; 49 U. S. App. 233] 25: 389
- City clerk's certificate of assessed valuation of property and city indebtedness, to show illegality of bonds. [86 Fed. 272; 57 U. S. App. 593] 30: 38
- Entry by deceased clerk, showing deposit of copyright work.  
[56 Fed. 483; 1 U. S. App. 573] 4: 10
- Bill of health signed by maritime subdelegate.  
[86 Fed. 55; 57 U. S. App. 236] 29: 621
- Certificate of custom-house official that vessel has paid hospital dues. Id.
- Application by vice consul for permit for vessel to depart. Id.
- Official documents under seal, executed by Chilean authorities. Id.
- So-called "quarterly reports" by county commissioners.  
[90 Fed. 575; 62 U. S. App. 255] 33: 181
- Certified copy from county records of claim for which county warrant issued. Id.
- Tabulated statements summarizing county indebtedness. Id.
- Entry in county records. Id.
- Charges filed in patent office against examiner and solicitor for applicant.  
[67 Fed. 917; 35 U. S. App. 221] 15: 73
- Entire record in insolvency proceedings unnecessary to prove single fact.  
[93 Fed. 624; 46 L. R. A. 541] 35: 496
- Record of grant of land by foreign country, after cession by it of territory to other foreign country. [93 Fed. 899] 35: 646
- Survey of land rendered official in character by recognition by United States authorities. Id.

**Ancient instruments; wills.**

- Sufficient authentication of ancient documents. [93 Fed. 899] 35: 646
- Ancient instruments, proof as to proper custody.  
[75 Fed. 254; 41 U. S. App. 392] 21: 325
- Presumption, when copy of will admitted to probate is offered.  
[80 Fed. 228; 42 U. S. App. 466] 25: 382
- Will not duly established, but which has stood as muniment of title for one hundred years. [93 Fed. 899] 35: 646
- Certified copy of record of ancient deed properly acknowledged when made, but not when recorded. [97 Fed. 12] 38: 25

**Evidence previously taken; affidavits.**

- When stenographic report of testimony given on former trial admissible.  
[80 Fed. 361; 49 U. S. App. 279] 25: 486
- Evidence previously taken in patent office on interference proceedings.  
[67 Fed. 917; 35 U. S. App. 221] 15: 73
- Of witness in action by infant for personal injuries, after witness's death, in action by infant's mother for loss of services. [99 Fed. 192] 39: 455
- Showing by affidavit after trial, nature of law case dismissed, when pleaded in bar in equity suit. [94 Fed. 897] 36: 536

**Written opinions.**

- Opinion of court, as evidence of question adjudicated.  
[83 Fed. 738; 54 U. S. App. 532] 28: 66
- Opinion of patent commissioner, rendered in interference proceeding.  
[67 Fed. 917; 35 U. S. App. 221] 15: 73

**EVIDENCE—continued.****Map or plat.**

Unofficial map.	[66 Fed. 280; 30 U. S. App. 90]	13: 436
	[66 Fed. 289; 30 U. S. App. 104]	13: 445
Diagram of place, in connection with testimony of witness.	[79 Fed. 263; 48 U. S. App. 331]	24: 564
Plat of town site, authentication.	[58 Fed. 152; 12 U. S. App. 665]	7: 130
	[58 Fed. 158; 12 U. S. App. 675]	7: 136
Plat of town, not acknowledged.	[53 Fed. 464; 10 U. S. App. 546]	3: 594
Plat in deputy surveyor's handwriting made while acting as agent for owners of warrants then in his hands.	[98 Fed. 556]	39: 160

**Ordinance.**

Certified copy of ordinance.	[64 Fed. 823; 24 U. S. App. 489]	12: 618
Ordinance limiting speed of trains.	[74 Fed. 460; 38 U. S. App. 659]	20: 593

**Accounts, account books, and memoranda.**

Right of one party to avail himself of evidence contained in books offered by other.	[75 Fed. 249; 44 U. S. App. 556]	21: 319
Papers used by the parties in an accounting and settlement.	[85 Fed. 924; 58 U. S. App. 597]	29: 487
Entries in firm books against special partner.	[95 Fed. 619]	37: 205
Pages containing relevant and irrelevant entries.	[51 Fed. 884; 1 U. S. App. 201]	2: 535
Duly certified transcript of books of Treasury Department, showing accounts between postmaster and United States.	[80 Fed. 852; 52 U. S. App. 168]	26: 188
Books showing measurement of logs by camp scalers.	[69 Fed. 773; 32 U. S. App. 520]	16: 400
Showing total amount of logs scaled from memoranda furnished by third person.	[64 Fed. 314; 22 U. S. App. 646]	12: 129
Laborer's time book, without evidence of person keeping.	[66 Fed. 522; 30 U. S. App. 55]	13: 620
Of municipal corporation.	[68 Fed. 849; 25 U. S. App. 354]	16: 28
Entries in bank ledger.	[72 Fed. 470; 38 U. S. App. 254]	18: 644
Bank teller's book, to show nonreception of money for certificates of deposit.	Id.	
Failure to produce books, when witness's recollection dependent thereon.	[56 Fed. 605; 14 U. S. App. 405]	6: 49
Books of bank, to show bank's acts and financial condition.	[96 Fed. 279]	37: 479
Books of national bank on prosecution for making false reports.	[97 Fed. 35]	38: 37
Bank treasurer's cash book, to show whether entry or withdrawal of deposit appears.	[94 Fed. 127]	36: 105
Hotel register, to corroborate testimony of witness that he was not in city.	[77 Fed. 117; 40 U. S. App. 710]	23: 65
Memoranda confirming oral statements in evidence.	[56 Fed. 203; 12 U. S. App. 281]	5: 474

**Letters.**

What sufficient to authenticate letter.	[78 Fed. 774; 47 U. S. App. 293]	24: 334
Letter of clerk, acknowledging receipt of notice of protest.	[69 Fed. 798; 32 U. S. App. 554]	16: 425
Letters showing communication to plaintiffs of false representations made to third persons.	[84 Fed. 430; 51 U. S. App. 693]	28: 443
Letter acknowledging oral promise to guarantee third person's note.	[95 Fed. 231]	37: 52

## EVIDENCE—continued.

- Letter containing statement of transaction testified to by witness. Id.  
 To show that witness prejudiced against defendant without laying foundation for impeachment. [97 Fed. 208] 38: 115  
 Letter from comptroller to national bank president, removed from latter's private box and given to Federal officer. [97 Fed. 35] 38: 37

## VIII. DEMONSTRATIVE; VIEW BY JURY.

- Other design patents admissible under general issue to show prior state of art. [97 Fed. 625] 38: 345  
 Models, maps and diagrams representing objects and places in personal injury case. [97 Fed. 882] 38: 523  
 Permitting witness to compare design of plaintiff's patent with others, and point out differences. [97 Fed. 625] 38: 345  
 Permitting plaiting machine to be operated in presence of jury on trial for counterfeiting. [89 Fed. 954; 61 U. S. App. 169] 32: 449  
 Courts discretionary right to exclude evidence of tests of article similar to those furnished under contract alleged to be defective. [98 Fed. 946] 40: 35  
 Result of tests by defendant, as to defects alleged by plaintiff in collars for joining gas pipe, produced in court. Id.  
 Admissibility of photograph of place of accident. [75 Fed. 373; 41 U. S. App. 498] 21: 402  
 Right to compel physical examination of one suing for personal injuries. [80 Fed. 278; 53 U. S. App. 22] 25: 413  
 Refusal to permit representatives of parties to accompany jury, discretionary. [98 Fed. 830] 39: 318

## IX. PAROL AND EXTRINSIC EVIDENCE CONCERNING WRITINGS.

- Of contents of writing collateral only to issue. [78 Fed. 460; 46 U. S. App. 673] 24: 169  
 Of oral contract subsequently reduced to writing. [80 Fed. 474; 42 U. S. App. 449] 25: 570  
 To prove payment of taxes in support of plea of limitation. [79 Fed. 608; 41 U. S. App. 755] 25: 126  
 To contradict recital in berth check, action for ejectment from berth. [54 Fed. 646; 13 U. S. App. 183; 21 L. R. A. 289] 4: 540  
 As to credits not appearing on face of judgment. [75 Fed. 852; 43 U. S. App. 698] 21: 538  
 To vary or explain entries in books of bank. [75 Fed. 249; 44 U. S. App. 556] 21: 319  
 Of custom of trade as to removal of goods from vessel by buyer. [77 Fed. 541; 42 U. S. App. 214] 23: 276  
 To show authority to sign. [68 Fed. 234; 29 U. S. App. 599] 15: 366  
 As to contract of sale entered by broker in his book. [93 Fed. 171] 35: 256  
 As to what induced guarantors to sign guaranty. [56 Fed. 409; 12 U. S. App. 433] 5: 530  
 To affect indorser's liability. [85 Fed. 920; 52 U. S. App. 699] 29: 636  
 That defendant's bookkeeper entered credit on plaintiff's statement. [63 Fed. 232; 25 U. S. App. 53] 11: 149  
 As to matter clearly connected with subject of written agreement. [83 Fed. 116; 53 U. S. App. 604] 27: 410  
 That insurance policy providing for avoidance in case of concurrent insurance or mortgage was issued with knowledge that same exists. [94 Fed. 990] 36: 615

**EVIDENCE—continued.**

That misdescription in policy was made by insurer's agent who knew the facts.  
[85 Fed. 125; 42 U. S. App. 728] 30: 95

Prior or contemporaneous statements of insurance agent as to contents or legal effect of policy which insured has opportunity to read.  
[99 Fed. 856] 40: 119

That lessees of land were to have it after lessor's death.  
[70 Fed. 894; 18 U. S. App. 723; 34 U. S. App. 316] 17: 479

That other party to contract, notified by corporate officer executing, of his want of authority.  
[97 Fed. 843] 38: 433

Parol modification of contract before put in writing.  
[74 Fed. 94; 36 U. S. App. 749] 20: 312

Of oral understanding that earlier contract should be substituted for later contract on the same subject.  
[97 Fed. 290] 38: 187

**When stranger a party.**

Of relation between palace-car company and railroad company.  
[62 Fed. 265; 23 U. S. App. 527; 33 L. R. A. 715] 10: 331

Rule not applicable in action between party to contract and third person.  
[88 Fed. 207; 59 U. S. App. 555] 31: 477

In action between party and stranger to written contract.  
[84 Fed. 430; 51 U. S. App. 693] 28: 443

Right of stranger to impeach written instrument by testimony of party who executed it.  
[76 Fed. 252; 40 U. S. App. 341] 22: 152

**To aid or affect construction, generally.**

To contradict settled legal construction of language.  
[83 Fed. 116; 53 U. S. App. 604] 27: 410

Of practical construction by parties to written contract, to effect construction by court.  
[94 Fed. 45] 36: 71

Opinion of one party as to meaning of contract which other about to sign.  
[92 Fed. 873] 35: 68

When written instrument not ambiguous or obscure, authorizing resort to facts *aliunde*.  
[93 Fed. 731] 35: 556

Of prior negotiations, lease and modification held not to be ambiguous.  
[78 Fed. 450; 45 U. S. App. 330] 24: 163

To negative implied agreement from language of written contract.  
[83 Fed. 116; 53 U. S. App. 604] 27: 410

To explain examining physician's answer to question in application for insurance.  
[72 Fed. 980; 44 U. S. App. 282] 19: 331

Circumstances out of which written contract arose, to ascertain subject-matter and standpoint of parties.  
[89 Fed. 832; 60 U. S. App. 431] 32: 368

To identify land described in mortgage as "30 acres in" specified quarter section.  
[87 Fed. 617; 59 U. S. App. 102] 31: 145

**Contract partly written and partly oral.**

That writing did not express whole contract.  
[74 Fed. 177; 38 U. S. App. 665] 20: 371

When not shown that writing not embody entire contract.  
[91 Fed. 272; 62 U. S. App. 437] 33: 509

To show entire contract partly parol.  
[70 Fed. 894; 18 U. S. App. 723; 34 U. S. App. 316] 17: 479

**Intention, understanding, negotiations, contemporaneous agreements, or writings.**

Guarantor's individual understanding, whether guaranty conditional.  
[93 Fed. 171] 35: 256

That writing signed by agent was intended as principal's obligation.  
[70 Fed. 894; 18 U. S. App. 723; 34 U. S. App. 316] 15: 632

Parol, to show intention, when character of instrument involved.  
[49 Fed. 401; 4 U. S. App. 209] 1: 299



**EVIDENCE—continued.**

- As to previous understanding as to what should be put into policy.  
[65 Fed. 724; 25 U. S. App. 201] 13: 88
- As to subsequent acts and conduct, to show understanding of parties.  
[94 Fed. 968] 36: 587
- Of negotiations leading up to written insurance contract.  
[71 Fed. 473; 34 U. S. App. 397] 18: 203
- Construction and effect of contract, previous negotiations or conversations.  
[61 Fed. 280; 20 U. S. App. 589] 9: 504
- Admissibility of writings contemporaneous with a deed of trust, to supplement it and explain real intention. [80 Fed. 564; 42 U. S. App. 508] 25: 644
- Of contemporaneous oral agreement or understanding, general rule.  
[85 Fed. 193; 54 U. S. App. 619] 29: 110
- To incorporate collateral guaranty as to amount of renewal premiums, in contract of employment of general insurance agent. [97 Fed. 913] 38: 553
- Oral promise of grantor to purchase and convey outstanding interest.  
[54 Fed. 848; 2 U. S. App. 568] 4: 609
- Of secret agreement contrary to provision in assignment for creditors.  
[85 Fed. 408; 56 U. S. App. 416] 29: 230

**Condition; defeasibility.**

- To show that deed was intended only as a mortgage.  
[60 Fed. 660; 23 U. S. App. 114] 9: 190
- That written contract absolute on face not to take effect except on certain conditions.  
[86 Fed. 818; 58 U. S. App. 320] 30: 415
- That note absolute in terms is payable from particular fund.  
[63 Fed. 371; 24 U. S. App. 188] 11: 240
- To convert bill of sale into mortgage. [62 Fed. 557; 27 U. S. App. 153] 10: 544
- To show that certificate of stock in national bank was issued solely as collateral.  
[85 Fed. 376; 56 U. S. App. 316] 29: 203
- To show condition precedent, of vesting of title under deed.  
[51 Fed. 625; 7 U. S. App. 285] 2: 415
- To show condition attached to assumption of mortgage by grantee in deed.  
[91 Fed. 229; 63 U. S. App. 545] 33: 472

**Consideration; receipt or release.**

- As to consideration for release. [60 Fed. 880; 23 U. S. App. 66] 9: 286
- Receipt with stipulations of release and discharge.  
[59 Fed. 483; 16 U. S. App. 577] 8: 188
- To contradict receipt, suit to enforce equitable mortgage.  
[58 Fed. 490; 19 U. S. App. 144] 7: 335
- To vary effect of final written settlement and release. [92 Fed. 873] 35: 68

**Fraud.**

- Of false representations inducing contract.  
[74 Fed. 177; 38 U. S. App. 665] 20: 371
- Of prior acts and declarations for fraud alleged.  
[70 Fed. 683; 30 U. S. App. 473] 17: 339
- As to promises contemporaneous with written contract to show good or bad faith.  
[80 Fed. 172; 53 U. S. App. 30] 25: 357

**Date; time.**

- As to time of passing title, where contract silent.  
[70 Fed. 640; 28 U. S. App. 600] 17: 309
- To show that newspaper containing notice of sale not published on day it bears date, collateral proceeding. [76 Fed. 721; 40 U. S. App. 427] 23: 541
- To prove date of location of mining claim when patent silent.  
[61 Fed. 557; 15 U. S. App. 456] 9: 613
- To show that order for issuing municipal bonds was not passed on its date.  
[66 Fed. 494; 30 U. S. App. 20] 13: 600

## EVIDENCE—continued.

**Concerning records.**

- To supplement record of laborer's lien.  
[80 Fed. 631; 42 U. S. App. 496] 26: 38
- To supply missing parts of municipal records as to issuance of bonds.  
[99 Fed. 202] 39: 462
- To contradict record as to election authorizing municipal bonds.  
[81 Fed. 329; 52 U. S. App. 214] 26: 434
- Rules of evidence in Federal courts, following state practice, see  
Note, 5: 594

**X. RELEVANCY AND MATERIALITY.**

## Admissibility under Pleading, see PLEADING.

- Rejecting relevant testimony tending to divert attention from precise issues involved.  
[97 Fed. 413] 38: 228
- Further testimony as to subject introduced by adverse party.  
[60 Fed. 370; 19 U. S. App. 596] 9: 20
- That assignor for creditors did not own property reserved.  
[63 Fed. 90; 27 U. S. App. 273] 11: 39
- That business advertised in circulars was a lottery.  
[63 Fed. 426; 24 U. S. App. 25] 12: 339
- Judgment as evidence of previous indebtedness.  
[53 Fed. 901; 10 U. S. App. 657] 4: 95
- That warrant of removal is invalid for insufficiency of.  
[63 Fed. 249; 25 U. S. App. 22; 28 L. R. A. 801] 11: 165
- In action on injunction bond, to show cause of delay in prosecuting action after injunction vacated.  
[85 Fed. 523; 56 U. S. App. 529] 29: 318
- To show possession by commission merchant of articles of consignors after claim made by former of entire disposal of same.  
[100 Fed. 600] 40: 581
- That apples of fine quality and skilfully packed and not liable to sustain injury by transportation. Id.
- That excess premium paid on indemnity policy after injury to employees because pay roll larger than estimated when advance premium paid.  
[100 Fed. 604] 40: 614
- To show that insured goods still held by railroad company as carrier when destroyed.  
[89 Fed. 131; 59 U. S. App. 499] 32: 173
- Evidence to support disallowed claim, admissible without presentation to accounting officers.  
[73 Fed. 800; 36 U. S. App. 645] 20: 11
- Infringement of copyright, source of variations immaterial.  
[59 Fed. 707; 20 U. S. App. 296] 8: 224
- That owner of warrants directed deputy surveyor to complete survey 14 years after original survey made.  
[98 Fed. 556] 39: 160
- Record of other proceeding.  
[76 Fed. 296; 47 U. S. App. 36] 22: 334
- To show reasonableness of city ordinance imposing license fee on telegraph poles and wires.  
[89 Fed. 454; 60 U. S. App. 398] 32: 246
- Admissions of alleged agent to show authority, when not prejudicial.  
[79 Fed. 420; 49 U. S. App. 148] 24: 650
- Resolution of state levee commissioners approving building of dam, in prosecution for building without consent of secretary of war.  
[92 Fed. 344] 34: 392
- Invalidity of city warrants in action by bona fide purchaser.  
[97 Fed. 449] 38: 264
- In replevin by United States for logs cut on public land.  
[59 Fed. 504; 4 U. S. App. 332] 1: 552
- Exact time of signing tariff act and consequent taking effect of act, admissible.  
[99 Fed. 939] 40: 190

**EVIDENCE—continued.**

- Deed to defendant executed after injury from nuisance.  
     [58 Fed. 152; 12 U. S. App. 665] 7: 130  
     [58 Fed. 158; 12 U. S. App. 675] 7: 136
- Of tests of gas piping without notice and not within reasonable time.  
     [73 Fed. 984; 46 U. S. App. 52] 20: 233
- Showing several sums entering into account.  
     [77 Fed. 541; 42 U. S. App. 214] 23: 276
- Transfer of municipal bonds for purpose of bringing suit thereon, admissible only to permit defenses available against transferer.  
     [100 Fed. 56] 40: 281
- To show that bonds in hands of bona fide holder exceeded constitutional limit.  
     [80 Fed. 692; 49 U. S. App. 399] 26: 91
- Of bank cashier's speculations with president's knowledge.  
     [87 Fed. 701; 59 U. S. App. 663] 31: 202
- Circumstantial evidence that cattle were killed by trains.  
     [49 Fed. 347; 4 U. S. App. 121] 1: 286
- On mandamus, to compel issuance of bonds to pay judgment against city.  
     [60 Fed. 387; 23 U. S. App. 29] 9: 37
- As to who went with special land office agent to land from which timber cut.  
     [66 Fed. 287; 30 U. S. App. 108] 13: 443
- Of memorandum on assessment roll, to show property exempt.  
     [68 Fed. 849; 25 U. S. App. 354] 16: 28
- Showing by appraiser's testimony disregard of statutory provisions for reappraisement of duties.  
     [70 Fed. 778; 35 U. S. App. 744] 17: 363
- To show proper classification of goods for customs duties, trade designations.  
     [83 Fed. 167; 55 U. S. App. 64] 27: 500
- To show what is reasonable time, opinions of experts.  
     [75 Fed. 818; 45 U. S. App. 84] 21: 530
- Time contemplated by parties. Id.
- Proof of possible speed of steamer, engine-room dial.  
     [53 Fed. 293; 11 U. S. App. 693] 3: 539

**Custom or habit.**

- Accident policy, exposure, common practice.  
     [58 Fed. 342; 12 U. S. App. 704] 7: 264
- Of general custom of insurance agents to grant credits on first premium.  
     [65 Fed. 765; 31 U. S. App. 163] 13: 284
- Insurance agent's reports to show practice of delivering policies before payment. Id.
- Of custom of port, to show reasonableness of rate of exchange for draft.  
     [91 Fed. 267; 63 U. S. App. 402] 33: 496
- As to examination of accounts and vouchers of agents whose fidelity insured.  
     [99 Fed. 242] 39: 496
- Customary way of building wooden runway over sidewalk.  
     [67 Fed. 68; 35 U. S. App. 41] 14: 308
- As to habitual disregard of rule of railroad company under different conditions.  
     [80 Fed. 488; 47 U. S. App. 647] 25: 585
- Custom of cattlemen to walk on top of cars.  
     [36 Fed. 451; 12 U. S. App. 392] 5: 551
- Custom to carefully instruct employees in use of dangerous machine.  
     [74 Fed. 608; 45 U. S. App. 45] 20: 555
- That rule violated by servant at time of injury, habitually disregarded.  
     [91 Fed. 224; 63 U. S. App. 553] 33: 468

**Character and reputation.**

- Good character of defendant, in actions for penalty for presenting false claim.  
     [54 Fed. 126; 12 U. S. App. 26] 4: 237
- As to good repute of servant charged with negligence.  
     [85 Fed. 353; 56 U. S. App. 313] 29: 194

**EVIDENCE—continued.**

- Testimony of adverse party opening way for. Id.  
 That general reputation of telegraph operator whose negligence caused a collision was good. [81 Fed. 807; 54 U. S. App. 110] 26: 626  
 Fellow servant's general reputation for drunkenness and incompetency. [73 Fed. 634; 43 U. S. App. 113] 19: 623  
 Evidence of bank officer's reputation for honesty and integrity, on trial for official misconduct. [87 Fed. 701; 59 U. S. App. 663] 31: 202  
 General reputation for integrity, candidate for office. [59 Fed. 530; 16 U. S. App. 613] 8: 201

**Notice; knowledge; belief.**

- Selling purchase money notes without indorsement, as indication of guilty knowledge. [56 Fed. 203; 12 U. S. App. 281] 5: 474  
 Not necessary to prove fact and knowledge thereof at same time by same witnesses. [77 Fed. 150; 40 U. S. App. 554] 23: 100  
 Of defendant's belief in validity of patent under which alleged infringing machines made. [94 Fed. 502] 37: 372  
 Libel, belief of city editor in thoroughness of preliminary investigation. [78 Fed. 769; 45 U. S. App. 636] 24: 329  
 Of conversation with carrier's agent, to show notice to carrier. [66 Fed. 868; 32 U. S. App. 60] 14: 153

**Intent; motive; fraud—In general.**

See also *infra*, **Similar acts and facts.**

- Party testifying as to his motive or intent. [57 Fed. 10; 13 U. S. App. 222, 314] 6: 231  
 That purchaser of land intended to make deferred payments with depreciated state scrip. [65 Fed. 731; 25 U. S. App. 124] 13: 160  
 Letter by insurer day before death to rebut intent to commit suicide. [92 Fed. 63; 63 U. S. App. 717] 34: 211  
 Meaning intended to be conveyed by signals from vessels. [53 Fed. 293; 11 U. S. App. 693] 3: 539  
 As to motive for breach of contract. [50 Fed. 40; 16 U. S. App. 569] 7: 652  
 In trespass to try title, issue as to good faith, deeds under insufficient power of attorney. [78 Fed. 862; 41 U. S. App. 745] 24: 374  
 Acceptance, fraud in procuring, action by bona fide holder. [58 Fed. 957; 16 U. S. App. 245] 7: 593  
 Communications and confidential relations between buyer and seller's agent, to show reliance on agent's representations. [56 Fed. 203; 12 U. S. App. 281] 5: 474  
 As to fraud in procuring governor's certificate of completion. [51 Fed. 629; 7 U. S. App. 297] 2: 419  
 To show secret agreement that assignee for creditors should take possession at once. [85 Fed. 408; 56 U. S. App. 416] 29: 230  
 On question of intent, under indictment for misapplication of bank funds. [82 Fed. 904; 49 U. S. App. 605] 27: 140  
 Collateral transactions to show guilty intent. [87 Fed. 701; 59 U. S. App. 663] 31: 202  
 Of threats to kill, by defendant in murder trial. [86 Fed. 106; 52 U. S. App. 647] 29: 600

**—Fraud of creditors.**

- What admissible, to show fraudulent purpose generally. [54 Fed. 295; 12 U. S. App. 148] 4: 341  
 False statements to commercial agency, garnishee's knowledge. [54 Fed. 867; 6 U. S. App. 403] 4: 629  
 Bona fides of debt, value of book account, garnishee's visits to debtor's store. Id.

**EVIDENCE—continued.**

- Purchaser's retention of sufficient goods to reimburse him.  
[50 Fed. 737; 4 U. S. App. 406] 1: 642
- Amount realized from goods. Id.
- Of prior rescinded conveyance, irrelevant, in action to set aside assignment for creditors.  
[50 Fed. 898; 4 U. S. App. 399] 2: 76

**Title or possession of real property.**

- Ownership of building, testimony of plaintiff.  
[52 Fed. 711; 10 U. S. App. 375] 3: 264
- Receiver's certificate for purchase money to plaintiff in ejectment.  
[86 Fed. 90; 56 U. S. App. 666] 29: 591
- That plaintiff in ejectment has only legal without equitable title.  
[76 Fed. 721; 40 U. S. App. 427] 23: 541
- Of bond for title in ejectment.  
[80 Fed. 228; 42 U. S. App. 406] 25: 382
- That grantor of defendant in ejectment uniformly considered owner, to show nature of plaintiff's possession.  
[92 Fed. 949] 35: 100
- Traveled road across land, adverse possession.  
[56 Fed. 447; 12 U. S. App. 421] 5: 548
- Of conveyances by cotenant, to show adverse possession.  
[70 Fed. 529; 37 U. S. App. 1, 199] 17: 251
- Yielding possession and nonuser, as evidence of abandonment of watercourse.  
[75 Fed. 379; 44 U. S. App. 566] 21: 409

**Negligence; care; skill.**

- Evidence admissible to show injury to live stock, during transportation, through negligence or accident, see Note, 32: 148
- See also *supra*, **Custom or habit; Character and reputation; *infra*, Similar acts and facts.**
- On question of defendant's negligence, notice before injury of dangers and unsafe practices.  
[79 Fed. 896; 51 U. S. App. 81] 25: 216
- As to health, vigor, sobriety, and peculiarities of one found dead under unrailed bridge.  
[67 Fed. 659; 33 U. S. App. 147] 14: 609
- Whether more experienced workman would have known that machine was dangerous.  
[81 Fed. 320; 55 U. S. App. 8] 26: 427
- To rebut inference of contributory negligence from failure to stop, look, and listen.  
[50 Fed. 814; 2 U. S. App. 213] 1: 688
- Death of switchman, ordinance requiring flagman at street crossing.  
[60 Fed. 999; 22 U. S. App. 94] 9: 321
- To disprove co-servant's negligence; not discharged or reprimanded.  
[55 Fed. 595; 12 U. S. App. 132] 5: 220
- Negligence of railroad company; fog; yard insufficiently manned.  
[57 Fed. 536; 15 U. S. App. 193] 6: 474
- That railroad track unfenced at place where collision occurred.  
[69 Fed. 808; 32 U. S. App. 577; 29 L. R. A. 695] 16: 435
- Distance from which crossing at which plaintiff injured visible from train.  
[88 Fed. 116; 60 U. S. App. 156] 31: 414
- Dangers in using machine and precautions to avoid them.  
[74 Fed. 608; 45 U. S. App. 45] 20: 555
- Whether injured employee would have continued service if he had known defects.  
[70 Fed. 669; 44 U. S. App. 189] 17: 330
- That railroad company agreed to plank between rails at crossing where employee injured.  
[87 Fed. 849; 58 U. S. App. 377] 31: 255
- As to care in maintaining light on fish trap, in action for drowning.  
[66 Fed. 910; 29 U. S. App. 554] 14: 178

**Damages; value—In general.**

- Concerning value of stock, see Note, 32: 149
- To prove damages, cancelation of membership in news association.  
[51 Fed. 377; 10 U. S. App. 72] 2: 282

**EVIDENCE—continued.**

- To show value of membership in news association. Id.  
 Plaintiff's general social standing, in libel suit on question of damages.  
     [63 Fed. 238; 26 U. S. App. 167; 26 L. R. A. 531] 11: 155  
 That woman charged with unchastity had young children, admissible in action  
     for libel. [72 Fed. 443; 34 U. S. App. 607] 18: 628  
 Dismissal of indictment for other crime before answer in libel suit, setting up  
     such indictment, in aggravation. [98 Fed. 925] 40: 163  
 Previous publication by others of same libelous matter, in mitigation. Id.  
 Of original cost of article, on question of value at subsequent period.  
     [83 Fed. 95; 55 U. S. App. 59] 27: 462  
 Contemporaneous contracts to supply consumers, to show damages from breach.  
     [59 Fed. 40; 16 U. S. App. 569] 7: 652  
 Of commissions which would have accrued to insurance agent under contract for  
     term of years, broken by transferring business to other agents.  
     [99 Fed. 222] 39: 476  
 Plaintiff's affidavit as to value of goods restored, action for conversion.  
     [59 Fed. 70; 19 U. S. App. 307] 8: 1  
 To prove damage from wrongful satisfaction of judgment.  
     [75 Fed. 959; 45 U. S. App. 79; 33 L. R. A. 250] 21: 581  
 Sale, cost of conforming pipes to schedule.  
     [62 Fed. 375; 18 U. S. App. 603] 10: 422  
 Condemnation, value before and after road built.  
     [61 Fed. 392; 15 U. S. App. 472] 9: 548  
 Rental value of one building, to show rental value of another in same locality.  
     [76 Fed. 730; 40 U. S. App. 455] 22: 515  
 Of decrease in rental value of neighboring property from closing street.  
     [86 Fed. 753; 58 U. S. App. 569] 30: 364  
 Damages of breach of warranty, loss of contract.  
     [55 Fed. 451; 3 U. S. App. 631] 5: 190  
 Value of Mexican onyx, to show value of Arizona onyx.  
     [72 Fed. 464; 36 U. S. App. 538] 18: 638  
 Of price received at auction for damaged goods, to show their market value.  
     [94 Fed. 180] 36: 135  
 Assessable value of leased railroad line, collateral attack on assessment.  
     [88 Fed. 140; 59 U. S. App. 330] 31: 427  
 Value of similar legal services in another place.  
     [58 Fed. 462; 19 U. S. App. 280] 7: 314  
 Financial ability of defendant, in action for legal services. Id.

**—Vessel.**

- To prove damages from detention of vessel during repairs.  
     [54 Fed. 404; 7 U. S. App. 652] 4: 393  
 As to damages on first trial of collision case, sufficient on second trial. Id.  
 To prove value of vessel having no established market value.  
     [58 Fed. 427; 14 U. S. App. 655] 7: 285

**—Stock and interest in corporation.**

- To show value of interest in corporation. [51 Fed. 63; 3 U. S. App. 125] 2: 97  
 Value of stock of corporation in receiver's hands.  
     [69 Fed. 798; 32 U. S. App. 554] 16: 425  
 Amount received for corporate property, to show value of stock. Id.  
 To show value of stock at time of sale by pledgee, price at which pledgee re-  
     quired it. [85 Fed. 539; 56 U. S. App. 556] 29: 333

**—Personal injuries; death.**

- That plaintiff in action for personal injuries has a wife and child.  
     [81 Fed. 807; 54 U. S. App. 110] 26: 626

**EVIDENCE—continued.**

- To prove damages from negligent injury, in proceeding against railroad receiver. [97 Fed. 239] 38: 143
- As to past earnings, to show damages from inability to work. [76 Fed. 517; 46 U. S. App. 300] 22: 306
- In mitigation of damages in personal injury suit, drinking habits. [56 Fed. 288; 15 U. S. App. 92] 5: 510
- Of poverty of plaintiff and his relatives, in action for personal injuries. [84 Fed. 772; 52 U. S. App. 442] 28: 207
- That plaintiff in suit for personal injuries was a sober, industrious man. [82 Fed. 158; 51 U. S. App. 503] 27: 136
- As to ages of children, in action for death from wrongful act. [48 Fed. 57; 4 U. S. App. 25] 1: 25

**Contracts, generally.**

- How far situation of parties may be considered in construing contract. [78 Fed. 325; 46 U. S. App. 680] 24: 107
- To show what was reasonable extension of credit as to debt contemplated by guaranty. [93 Fed. 171] 35: 256
- Issue as to parol agreement for reduction in price, evidence as to scheme of manufacturers. [85 Fed. 193; 54 U. S. App. 619] 29: 110
- Excluding question covering conditions not embraced in contract. [62 Fed. 375; 18 U. S. App. 603] 10: 422
- Verbal contract void under statute of frauds, to resist injunction. [77 Fed. 58; 40 U. S. App. 579] 23: 13
- Transactions prior to or not connected with alleged parol contract. [72 Fed. 236; 25 U. S. App. 595] 18: 527
- To show breach of guaranty as to increased capacity of flour mill. [65 Fed. 52; 27 U. S. App. 583] 12: 511
- Entire conduct of parties to show waiver of time for completing building. [88 Fed. 630; 60 U. S. App. 253] 32: 67
- Of report of insurance inspector, in action for purchase price of goods. [62 Fed. 375; 18 U. S. App. 603] 10: 422
- As to seller's agreement as to daily shipments, where purchaser failed to furnish cars. [71 Fed. 477; 34 U. S. App. 414] 18: 207
- Letter to show knowledge of nonacceptance of option to purchase stock. [66 Fed. 467; 30 U. S. App. 244] 14: 253
- Acceptance payable out of special fund, fund claimed by third persons. [58 Fed. 957; 16 U. S. App. 245] 7: 593
- Acceptance payable out of specified fund, bona fide holder, state of accounts. *Id.*
- On question of estoppel to sue on original notes after accepting payments on compromise notes. [75 Fed. 852; 43 U. S. App. 698] 21: 538
- Damages from breach of warranty evidence of loss of contract. [55 Fed. 451; 3 U. S. App. 631] 5: 190
- Contemporaneous contracts to show damages from breach. [59 Fed. 40; 16 U. S. App. 569] 7: 652

**Insurance cases.**

- That insured made equally untrue answers in subsequent application. [72 Fed. 413; 37 U. S. App. 692; 38 L. R. A. 33] 19: 286
- Financial ability of insured, to show waiver of forfeiture for nonpayment of assessment. [93 Fed. 747] 35: 573
- Affidavits of neighbors on application for pension, in action on policy subsequently obtained by pensioner. [72 Fed. 980; 44 U. S. App. 282] 19: 331
- Award, in action on policy of insurance. [61 Fed. 752; 21 U. S. App. 228] 9: 623
- Waiver of proofs of loss, declaration of forfeiture, etc. [58 Fed. 541; 19 U. S. App. 173] 7: 359
- Report on application for pension, to show falsity of statements in subsequent application for insurance. [72 Fed. 980; 44 U. S. App. 282] 19: 331

**EVIDENCE—continued.**

- Statement by insured when previously applying for pension. Id.  
 Letter by insured to rebut intent to commit suicide.  
     [92 Fed. 63; 63 U. S. App. 717] 34: 211  
 Agent's reports to show practice of delivering policy before payment.  
     [65 Fed. 765; 31 U. S. App. 163] 13: 284  
 Of general custom of insurance agents to grant credits on first premium. Id.  
 Accident policy, exposure, common practice.  
     [58 Fed. 342; 12 U. S. App. 704] 7: 264

**Patent.**

- As to construction and operation of patented machines.  
     [72 Fed. 530; 34 U. S. App. 619] 19: 1  
 That different royalties for patent are made equivalent otherwise.  
     [68 Fed. 119; 25 U. S. App. 315] 15: 303  
 Of patent of which notice not given, merely to show prior state of art.  
     [94 Fed. 155] 36: 125  
 What admissible to show prior conception and connection with reduction to practice.  
     [77 Fed. 630; 47 U. S. App. 205] 23: 367  
 Date of application for foreign patent subsequently patented in the United States, to show actual date of invention.  
     [98 Fed. 613] 39: 185  
 Scandalous pamphlet, novelty of invention.  
     [55 Fed. 982; 14 U. S. App. 312] 5: 371  
 Infringement of patent, assignment before patent.  
     [56 Fed. 587; 15 U. S. App. 143] 6: 45  
 Infringement of patent, model before jury, testimony as to shape of part. Id  
 That patent was issued fraudulently or through gross negligence.  
     [67 Fed. 917; 35 U. S. App. 221] 15: 73  
 Belief in validity of patent under which machine made. [94 Fed. 502] 37: 372  
 Of sales to other parties in action for infringement.  
     [74 Fed. 636; 41 U. S. App. 309] 20: 568

**Trademark cases.**

- Statement filed to obtain registration of trademark.  
     [59 Fed. 572; 17 U. S. App. 352] 8: 215  
 Registry of trademark, infringement of common-law trademark. Id.  
     [59 Fed. 577; 17 U. S. App. 427] 8: 220  
 Foreign decision granting right to register trademark.  
     [71 Fed. 167; 35 U. S. App. 750] 18: 24

**Libel and slander, generally.**

- Rumors, general interpretation of acts.  
     [59 Fed. 530; 16 U. S. App. 613] 8: 201  
 Statements showing reckless indifference, sensationalism. Id.  
 Nonpublication of notice of bringing of suit. Id.  
 Libel, suits against other newspapers.  
     [55 Fed. 240; 14 U. S. App. 173] 5: 91  
 That woman charged with unchastity had young children.  
     [72 Fed. 443; 34 U. S. App. 607] 18: 628  
 General social standing of plaintiff.  
     [63 Fed. 233; 26 U. S. App. 167; 26 L. R. A. 531] 11: 155  
 Prior or contemporaneous publication to show malice.  
     [59 Fed. 530; 16 U. S. App. 613] 8: 201  
 Previous publication of same matter, in mitigation of damages.  
     [98 Fed. 925] 40: 163  
 Of similar publications in other papers.  
     [72 Fed. 443; 34 U. S. App. 613] 18: 628  
 Recovery of judgment against other paper for same libel.  
     [78 Fed. 769; 45 U. S. App. 636] 24: 329  
 Libel, negating special damages when only punitive damages. Id.



## EVIDENCE—continued.

- Slander, stating conversation, referring to information, denying malice.  
[78 Fed. 460; 46 U. S. App. 673] 24: 169
- Alleged libelous articles.  
[63 Fed. 873; 25 U. S. App. 99] 11: 476
- That investigation would have shown error rendering despatch published libelous.  
[73 Fed. 440; 38 U. S. App. 557] 19: 516
- That witness understood libelous article to refer to plaintiff.  
[72 Fed. 443; 34 U. S. App. 607] 18: 628
- Articles in newspaper published in other state, in action for libel.  
[63 Fed. 873; 25 U. S. App. 99] 11: 476
- Other offenses, as defense in libel suit, see Note, 40: 168
- General reputation for integrity, candidate for office.  
[59 Fed. 530; 16 U. S. App. 613] 8: 201
- City editor's belief in thoroughness of preliminary investigation.  
[78 Fed. 769; 45 U. S. App. 636] 24: 329
- Dismissal of indictment for other crime before answer in libel suit setting up such indictment, admissible in aggravation of damages.  
[98 Fed. 925] 40: 163

**Corporate and partnership matters.**

See also *supra*, **Damages, value.**

- To identify stockholders, *idem sonans*. [51 Fed. 409; 4 U. S. App. 524] 2: 314
- To prove organization of corporation. [59 Fed. 746; 19 U. S. App. 336] 8: 244
- Stock books, to prove defendant a stockholder.  
[51 Fed. 381; 4 U. S. App. 438] 2: 286
- As to final accounts between alleged partners after joint liability, if any fixed.  
[92 Fed. 858] 35: 52
- Of nonexistence of limited partnership claiming property levied on.  
[69 Fed. 220; 30 U. S. App. 343] 16: 214
- Of books of corporation, to prove that one is a stockholder.  
[79 Fed. 906; 15 U. S. App. 204] 25: 227

**Rebuttal and corroboration, generally.**

As to Time of Introducing Rebuttal Evidence, see TRIAL.

- Evidence showing impossibility of truth of other testimony.  
[76 Fed. 212; 40 U. S. App. 298] 22: 132
- To explain failure to call members of family as witnesses.  
[49 Fed. 696; 7 U. S. App. 84] 1: 416
- Inadmissible evidence to rebut inadmissible evidence.  
[56 Fed. 437; 12 U. S. App. 295] 5: 538
- Of testimony as to conversation. [61 Fed. 809; 27 U. S. App. 88] 10: 87
- Date of historical fact to test recollection of other witness testifying to dates.  
[72 Fed. 142; 30 U. S. App. 637] 18: 487
- Of increased smoke and cinder from elevation of railroad track, to rebut evidence of furnishing better means of access to premises than highway discontinued.  
[98 Fed. 830] 39: 318

**Similar acts and facts—In general.**

- Value of similar legal services in other place.  
[58 Fed. 462; 19 U. S. App. 280] 7: 314
- Of evidence of insanity of person in question, at prior time and different place.  
[77 Fed. 150; 40 U. S. App. 554] 23: 100
- Of subsequent illicit relations between writer and addressee of lewd and lascivious letters.  
[87 Fed. 329; 59 U. S. App. 311] 31: 1
- Other acts of dishonesty of person whose fidelity insured.  
[72 Fed. 470; 38 U. S. App. 254] 18: 644
- Of other offenses as defense in libel or slander suit, see Note, 40: 168

**—Fraud.**

- To prove fraud, course of business. [51 Fed. 884; 1 U. S. App. 201] 2: 535

**EVIDENCE—continued.**

Similar frauds.	<b>Id.</b>
Bona fides of sale, subsequent sale to another.	
[50 Fed. 686; 4 U. S. App. 31]	1: 613
Bona fides of chattel mortgage, other transfers, disposition of property.	
[54 Fed. 696; 12 U. S. App. 174]	4: 554
Use of "salted" samples of ore in prior negotiations with other persons.	
[61 Fed. 163; 22 U. S. App. 12]	9: 415

**—Other negligent acts, accidents, etc.**

Alleged incompetent servant's previous negligent acts.	
[65 Fed. 952; 31 U. S. App. 213]	13: 233
Prior acts of negligence, as bearing on cause of injury.	
[75 Fed. 953; 33 U. S. App. 567]	21: 575
Similar accidents to other persons through same obstruction on sidewalk.	
[75 Fed. 373; 41 U. S. App. 498]	21: 402
Of narrow escapes of other persons at crossing where plaintiff injured.	
[67 Fed. 665; 32 U. S. App. 168, 406]	14: 615
Origin of fire in elevator, previous fire.	
[59 Fed. 879; 21 U. S. App. 24]	8: 341
Origin, fires set on previous occasion.	
[49 Fed. 807; 4 U. S. App. 247]	1: 441
[52 Fed. 711; 10 U. S. App. 375]	3: 264
[54 Fed. 474; 10 U. S. App. 629]	4: 447

**—Conditions at other times and places.**

Repairing machinery after accident.	[55 Fed. 595; 12 U. S. App. 132]	5: 220
Improving machinery after accident.	[60 Fed. 71; 20 U. S. App. 326]	8: 471
Repair of machinery after injury to servant.		
	[74 Fed. 155; 36 U. S. App. 682]	20: 366
That guard rail was blocked after injury to employee.		
	[69 Fed. 139; 37 U. S. App. 262]	16: 182
Combustible material at other point of right of way.		
	[51 Fed. 658; 7 U. S. App. 254]	2: 446
Of partial occupancy of right of way, to show no adverse holding of remainder.		
	[94 Fed. 340]	36: 282
Defective condition of telegraph wire nine months after accident.		
	[64 Fed. 287; 28 U. S. App. 123]	12: 104
Of similar defects in all similar places in railroad yard, to show employee's knowledge.		
	[87 Fed. 849; 58 U. S. App. 377]	31: 255
That insured made equally untrue answers in subsequent applications.		
	[72 Fed. 413; 37 U. S. App. 692; 38 L. R. A. 33]	19: 286
Prior or contemporaneous publication, to show malice in libel.		
	[59 Fed. 530; 16 U. S. App. 613]	8: 201
Of similar publications in other papers in action for libel.		
	[72 Fed. 443; 34 U. S. App. 607]	18: 628

**—Other persons, things, or transactions.**

Rental value of one building to show rental value of another in same locality.	
[76 Fed. 730; 40 U. S. App. 455]	22: 515
Work of other machines of same pattern.	
[56 Fed. 437; 12 U. S. App. 295]	5: 538
Value of Mexican onyx to show value of Arizona onyx.	
[72 Fed. 464; 36 U. S. App. 538]	18: 638
That similar articles purchased by other persons worked properly.	
[74 Fed. 681; 43 U. S. App. 383]	20: 662
Breach of warranty as to machines, failure of other machines of other pattern.	
[48 Fed. 803; 2 U. S. App. 139]	1: 102
Damages for injuries to car, another car taken apart and lengthened.	
[60 Fed. 993; 22 U. S. App. 102]	9: 314

## EVIDENCE—continued.

- That unknown person took ore from other mine, to show that defendant's trespass wilful. [93 Fed. 166] 35: 252
- Of rules of other companies governing engineers as to manner of approaching curves. [79 Fed. 903; 51 U. S. App. 157] 25: 223
- That telegraph company with wires down had other messages transmitted by rival company. [66 Fed. 898; 29 U. S. App. 227] 14: 166
- Of sales to other parties, in action for infringement of patent. [74 Fed. 636; 41 U. S. App. 309] 20: 568

## XI. WEIGHT AND SUFFICIENCY.

- Credibility of witnesses questioned by jury. [56 Fed. 20; 12 U. S. App. 240] 5: 410
- Inference from failure to produce witnesses. [54 Fed. 481; 10 U. S. App. 640] 4: 454  
[54 Fed. 485; 10 U. S. App. 647] 4: 458  
[54 Fed. 486; 12 U. S. App. 72] 4: 459  
[54 Fed. 485; 10 U. S. App. 650] 4: 459  
[54 Fed. 486; 12 U. S. App. 170] 4: 460
- To establish partnership, no articles or agreement. [57 Fed. 257; 18 U. S. App. 27] 6: 326
- To show agreement that certain partner not to receive salary. [99 Fed. 510] 40: 498
- Mere failure of witness to recall receipt of money twenty years before insufficient to impeach partnership account otherwise accurate. Id.
- To establish that plaintiff is a British subject. [55 Fed. 240; 14 U. S. App. 173] 5: 91
- Character of proof of defense raised before master. [72 Fed. 301; 36 U. S. App. 419] 18: 573
- Probability against untruthfulness of witnesses. [73 Fed. 878; 38 U. S. App. 506] 20: 81
- To show execution of mortgage before deed. [56 Fed. 64; 12 U. S. App. 336] 5: 418
- Date on account no evidence of time of creating indebtedness. [90 Fed. 575; 62 U. S. App. 255] 33: 181
- Effect of bill of lading as evidence. [62 Fed. 407; 22 U. S. App. 344] 10: 454
- As to engines which set out fire. [54 Fed. 474; 10 U. S. App. 629] 4: 447
- As to breach of warranty of machinery. [48 Fed. 803; 2 U. S. App. 139] 1: 102
- To show authority of bank officer to assign judgment. [82 Fed. 277; 48 U. S. App. 388] 27: 120
- To show general manager's authority to sign corporate notes. [69 Fed. 912; 32 U. S. App. 654] 16: 534
- To show that agent derived personal profit. [58 Fed. 101; 12 U. S. App. 591] 7: 105
- Of change of corporate name, copy of certificate of. [83 Fed. 288; 51 U. S. App. 536] 28: 404
- Whether bank bona fide purchaser of notes procured by president. [55 Fed. 905; 17 U. S. App. 1; 20 L. R. A. 554] 5: 311
- To show that broker had possession of certificates of stock at time of alleged conversion. [80 Fed. 500; 39 U. S. App. 619] 25: 596
- To establish indebtedness from husband and wife supporting conveyance between. [75 Fed. 145; 44 U. S. App. 643] 21: 279
- Of evidence by claimants of land as against devisees, as to parol contract with testator. [70 Fed. 894; 18 U. S. App. 723; 34 U. S. App. 316] 17: 479
- To show invalidity of county warrants because issued after maximum limit reached. [88 Fed. 749; 60 U. S. App. 38] 32: 101

## EVIDENCE—continued.

- Recital in claim filed against county of date when services rendered. [90 Fed. 575; 62 U. S. App. 235] 33: 181
- Date of county warrant no evidence of date indebtedness created. Id.
- To support plea of appearance and trial under indictment. [72 Fed. 972; 41 U. S. App. 1] 19: 318
- Recitals in foreclosure decree to show title. [69 Fed. 297; 25 U. S. App. 368] 16: 227
- Recital in forthcoming bond that value of property does not exceed specified sum. [98 Fed. 793] 39: 294
- Fragmentary transcript from books showing marshal's account, not authorize judgment against his sureties long after his death. [97 Fed. 452] 38: 267
- Unsustained plea that libelous publication substantially true, evidence of malice. [98 Fed. 925] 40: 163
- Delivery of deed by its record. [65 Fed. 441; 24 U. S. App. 573] 13: 1
- Patent to "natural heir" to show illegitimacy. [70 Fed. 960; 30 U. S. App. 516] 17: 542
- Of intent to abandon homestead. [89 Fed. 213; 60 U. S. App. 602] 32: 193
- Of intention to abrogate separation agreement. [97 Fed. 367] 38: 592
- To show overdraft. [63 Fed. 773; 26 U. S. App. 237] 11: 415
- To show that note was for consideration. [63 Fed. 26; 22 U. S. App. 493] 11: 16
- Necessity of showing contract relation with defendants in action on contractor's bond. [98 Fed. 73] 38: 659
- Consummation of sale in accordance with terms of written contract. [97 Fed. 290] 38: 187
- That grants of land referred to in ancient instruments were made. [93 Fed. 809] 35: 646
- That claim of Indian agent had been disallowed. [73 Fed. 800; 36 U. S. App. 645] 20: 11
- Finding that hair mixed with wool was from sheep and not from goats. [55 Fed. 964; 8 U. S. App. 409] 5: 359
- To justify cancelation of entry by land department. [81 Fed. 651; 48 U. S. App. 462] 26: 514
- Of Chinese person claiming to have been born in United States. [94 Fed. 834] 35: 327
- American nativity of Chinaman determined by ordinary rules of evidence. [100 Fed. 398] 40: 448
- To show retention of character of Chinese merchant. [77 Fed. 168; 44 U. S. App. 674] 23: 110
- To establish status of Chinese as merchant. [100 Fed. 609] 40: 618
- To sustain finding that stockholder transferred stock to escape liability. [72 Fed. 402; 36 U. S. App. 462] 18: 618
- To prove common-law marriage. [58 Fed. 833; 20 U. S. App. 87] 7: 508
- Entry of transfer of stock to one and payments by him, not prima facie evidence that he is a stockholder. [79 Fed. 906; 51 U. S. App. 204] 25: 227
- To show incompetency of grantor in deed. [76 Fed. 664; 44 U. S. App. 702] 22: 466
- To show sufficient mental capacity of grantor. [86 Fed. 51; 57 U. S. App. 634] 29: 547
- Patent for amount of land to which single man entitled, to show nonmarriage. [70 Fed. 960; 30 U. S. App. 516] 17: 542
- Evidence required to overcome answer sworn to by person without personal knowledge. [97 Fed. 696] 38: 365
- To overcome answer in equity. [56 Fed. 278; 15 U. S. App. 79] 5: 502
- Bill and answer in equity as evidence. [58 Fed. 58; 19 U. S. App. 36; 24 L. R. A. 73] 7: 15

**EVIDENCE—continued.**

- Overcoming. [48 Fed. 780; 2 U. S. App. 40] 1: 93  
 Of prior use of trademark of one sued for infringement. [85 Fed. 231; 55 U. S. App. 575] 29: 245

**Comparative weight.**

- Relative number of witnesses. [56 Fed. 1001; 12 U. S. App. 482] 6: 217  
 Affirmative and negative testimony. [54 Fed. 301; 6 U. S. App. 381] 4: 346  
 Conflicting parol testimony to vary written instrument. [57 Fed. 865; 12 U. S. App. 676] 6: 621  
 Letter from firm incorrectly stating contract, as affecting testimony of member on other point. [74 Fed. 177; 38 U. S. App. 665] 20: 371  
 Insufficiency of previous contradictory testimony to discredit evidence given on trial. [63 Fed. 280; 25 U. S. App. 1] 11: 187  
 Official report of opinion of Supreme Court controls certified copy. [77 Fed. 490; 33 U. S. App. 714] 23: 250  
 Testimony of disinterested witnesses govern where interested witnesses in irreconcilable conflict. [66 Fed. 1020; 33 U. S. App. 35] 14: 225

**Title and rights in property.**

- To show title to timber in replevin, actual possession of land. [80 Fed. 954; 54 U. S. App. 54] 26: 272  
 Receipt and certificate as evidence of title to mining claim. [61 Fed. 557; 15 U. S. App. 456] 9: 613  
 Title or interest supporting action for damages for nuisance. [58 Fed. 152; 12 U. S. App. 665] 7: 130  
 [58 Fed. 158; 12 U. S. App. 675] 7: 136  
 To establish trust in corporate stock. [57 Fed. 677; 18 U. S. App. 293] 6: 500

**Value; damages.**

- What sufficient proof of pecuniary damage from wrongful killing. [57 Fed. 536; 15 U. S. App. 193] 6: 474  
 Market value of machines to show actual value. [74 Fed. 681; 43 U. S. App. 383] 20: 662  
 Statements and accounts made "prima facie evidence" of loss. [72 Fed. 484; 38 U. S. App. 280] 18: 657  
 Postmaster general's order withholding commissions, as evidence of government's loss in action on postmaster's bond. [85 Fed. 372; 56 U. S. App. 409] 29: 199

**Fraud; collusion; conspiracy.**

- Must be satisfactory. [59 Fed. 70; 19 U. S. App. 307] 8: 1  
 Inferring guilty knowledge from neglect and want of business prudence. [54 Fed. 126; 12 U. S. App. 26] 4: 237  
 In conveyance, purchase by grantor's son of debts assumed by grantee. [81 Fed. 899; 54 U. S. App. 123] 26: 670  
 In conveyance of goods. [70 Fed. 40; 36 U. S. App. 16] 16: 628  
 To charge mortgagee with notice that goods had been procured by fraud. [57 Fed. 685; 18 U. S. App. 256; 24 L. R. A. 417] 6: 508  
 To support inference of collusion. [56 Fed. 203; 12 U. S. App. 281] 5: 474  
 Collusion against purchaser inferred from fictitious option. Id.  
 In procuring release. [63 Fed. 800; 27 U. S. App. 450] 12: 598  
 Against revenue laws, justifying forfeiture of whisky. [66 Fed. 984; 30 U. S. App. 240] 14: 220  
 To show that "salting" of ore done by defendant and not accidental. [61 Fed. 163; 22 U. S. App. 12] 9: 415  
 In civil case, to establish conspiracy. [76 Fed. 140; 40 U. S. App. 173] 22: 104  
 Inferring conspiracy from other facts proved. Id.

## EVIDENCE—continued.

**Mistake or fraud by arbiter.**

- To show bad faith in arbiter's award under contract.  
[76 Fed. 941; 44 U. S. App. 714] 22: 630
- To establish gross mistake or bad faith of arbiter under contract.  
[74 Fed. 707; 40 U. S. App. 61] 21: 3
- To show good faith of engineer whose estimate is to be conclusive under contract.  
[67 Fed. 633; 31 U. S. App. 606] 14: 583

**Negligence, generally.**

- Negligence in leaving lighter without a watchman.  
[57 Fed. 311; 14 U. S. App. 496] 6: 346
- Negligence of railway company in killing mare.  
[54 Fed. 481; 10 U. S. App. 640] 4: 454  
[54 Fed. 485; 10 U. S. App. 650] 4: 454  
[54 Fed. 486; 12 U. S. App. 172] 4: 459  
[54 Fed. 485; 10 U. S. App. 647] 4: 458  
[54 Fed. 486; 12 U. S. App. 170] 4: 460
- Presumption of knowledge of defect in car not overcome by evidence that competent inspector employed.  
[94 Fed. 781] 37: 1
- Of railroad company's negligence as to loose step on engine.  
[95 Fed. 244] 37: 56
- To show negligence causing collision between trains at crossing.  
[51 Fed. 649; 10 U. S. App. 209] 2: 437
- Of negligence from head end collision between trains.  
[67 Fed. 625; 31 U. S. App. 665] 14: 377
- To show negligence of railway company in furnishing defective locomotive.  
[69 Fed. 559; 44 U. S. App. 1] 16: 317
- To support finding of negligence in construction of railroad trestle.  
[48 Fed. 62; 4 U. S. App. 49] 1: 37
- That open, unlighted hatch down which plaintiff fell usually unlighted.  
[94 Fed. 221] 36: 208
- To show negligence in not providing guard for saw.  
[74 Fed. 195; 34 U. S. App. 743] 20: 390
- Inferring master's negligence from condition of appliance after accident.  
[61 Fed. 259; 23 U. S. App. 319] 9: 487
- As to negligence in transmission of telegrams.  
[61 Fed. 624; 15 U. S. App. 445] 9: 680
- As to negligence in respect to opening street.  
[58 Fed. 338; 19 U. S. App. 197] 7: 260
- Fire communicated from locomotive, prima facie evidence of negligence.  
[49 Fed. 807; 4 U. S. App. 247] 1: 441
- To establish contributory negligence.  
[97 Fed. 423] 38: 239
- Contributory negligence, preponderance necessary.  
[49 Fed. 801; 4 U. S. App. 264] 1: 435
- Contributory negligence, contradictory inferences.  
[60 Fed. 993; 22 U. S. App. 102] 9: 314
- Contributory negligence of owner of property destroyed by fire, preponderance necessary.  
[51 Fed. 658; 7 U. S. App. 254] 2: 446
- Collision cases.  
[54 Fed. 404; 7 U. S. App. 652] 4: 393
- Sufficiency, to show occurrence of collision.  
[69 Fed. 847; 14 U. S. App. 711] 13: 686
- Relative weight of testimony of witnesses as to speed of vessel.  
[52 Fed. 403; 6 U. S. App. 153] 3: 165
- Adopting theory most in accord with probability where evidence as to collision conflicting.  
[91 Fed. 173; 62 U. S. App. 361] 33: 435
- Libel in collision case properly dismissed when principal witnesses on each side testify falsely.  
[55 Fed. 338; 14 U. S. App. 128] 5: 122

**EVIDENCE—continued.**

Relative weight of testimony as to precautions taken by steamer to avoid collision.	[61 Fed. 832; 21 U. S. App. 239]	10: 127
Relative weight of testimony of witnesses in collision case.	[74 Fed. 906; 33 U. S. App. 531]	21: 169
Of admissions of officers or seamen of hostile vessel in collision case.	[80 Fed. 297; 50 U. S. App. 39]	25: 430
Whether vessel showed light, negative, against positive.	[48 Fed. 764; 1 U. S. App. 32]	1: 87
	[60 Fed. 299; 20 U. S. App. 365]	8: 624
That schooner colliding in fog not in fault as to signals and lights.	[63 Fed. 280; 25 U. S. App. 1]	11: 187
That lights on steam barge were burning at time of collision.	[62 Fed. 92; 8 U. S. App. 562]	10: 284
To show intention of officers and lookouts on vessel to signals given.	[74 Fed. 316; 33 U. S. App. 443]	20: 214
Insufficiency to show negligence of either vessel where smaller suddenly sheers into larger at moment of passing.	[100 Fed. 663]	40: 634
To show that collision resulted by schooner having right of way changing course after vessels within sight of each other.	[98 Fed. 1000]	39: 377
That collision due to failure of steamer to promptly turn to port at bend in channel after agreement by signal.	[100 Fed. 502]	40: 517
Weight given to testimony of witnesses as to what done on their own vessel.	[67 Fed. 612; 35 U. S. App. 165]	14: 573
To sustain finding against inevitable accident.	[55 Fed. 1019; 14 U. S. App. 373]	5: 388
To establish that collision was result of inevitable accident.	[54 Fed. 907; 2 U. S. App. 596]	4: 657
Finding against inevitable accident, review of.	[55 Fed. 1019; 14 U. S. App. 373]	5: 388
Preponderance showing steamer in fault in failing to avoid sail.	[57 Fed. 251; 14 U. S. App. 513]	6: 324
Failure of steamer to slow up inferred from damage from swell.	[61 Fed. 220; 17 U. S. App. 508]	9: 455
Burden of rebutting presumption of negligence from breaking of tiller rope.	[61 Fed. 120; 22 U. S. App. 69]	9: 393
To induce belief of negligence of pilot.	[81 Fed. 227; 39 U. S. App. 638]	26: 338
As to location of light on vessel, irresponsible.	[48 Fed. 764; 1 U. S. App. 32]	1: 87
To justify inference that sinking of wharf boat was due to blow from steamer.	[80 Fed. 943; 39 U. S. App. 594]	26: 270
Failure to satisfactorily locate fault causing injury to vessel in passing draw bridge.	[97 Fed. 107]	38: 70
Of additional proofs on appeal in collision case.	[64 Fed. 806; 26 U. S. App. 466]	12: 611
Of damages in collision case, insufficient as basis of award.	[54 Fed. 404; 7 U. S. App. 652]	4: 393

**Shipping matters.**

To establish verbal charter party.	[60 Fed. 447; 20 U. S. App. 344]	9: 61
Inference of unseaworthiness from abandonment of vessel.	[50 Fed. 477; 1 U. S. App. 173]	1: 533
Of seaworthiness of vessel at commencement of voyage.	[74 Fed. 413; 38 U. S. App. 356]	20: 486
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**EVIDENCE—continued.**

That certain number of sound and injured cattle thrown overboard in storm insufficient to render vessel liable for entire number.

[66 Fed. 776; 35 U. S. App. 44] 14: 88

To show quantity of cargo loaded. [56 Fed. 605; 14 U. S. App. 405] 6: 49

As to extent of damage to cargo of sugar. [71 Fed. 728; 38 U. S. App. 1] 18: 226

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To establish custom in insurance business.

[54 Fed. 839; 6 U. S. App. 549] 4: 600

To show that death of insured was accidental.

[84 Fed. 410; 55 U. S. App. 200] 28: 281

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[58 Fed. 945; 16 U. S. App. 290; 22 L. R. A. 620] 7: 581

That insurance company knew of agent's practice to give credit.

[65 Fed. 765; 31 U. S. App. 163] 13: 284

To show insured's intention to commit suicide when taking policy.

[70 Fed. 954; 28 U. S. App. 612; 42 L. R. A. 583] 17: 537

Accident insurance, injury while violating law, degree of proof.

[59 Fed. 559; 19 U. S. App. 304] 8: 213

That death of insured resulted from accident. [93 Fed. 158] 35: 250

To show that notice of time when premium due given.

[73 Fed. 144; 44 U. S. App. 316] 19: 414

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Failure to construct machine under patent, not proof of invalidity.

[70 Fed. 66; 33 U. S. App. 306] 16: 639

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[71 Fed. 876; 39 U. S. App. 95] 18: 375

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[75 Fed. 670; 33 U. S. App. 581] 21: 491

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[59 Fed. 147; 16 U. S. App. 559] 8: 56

To show anticipation of invention. [81 Fed. 726; 49 U. S. App. 414] 26: 578

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[81 Fed. 403; 50 U. S. App. 151] 26: 456

Evidence by trained mechanic as to ease in duplicating alleged infringing device.

[71 Fed. 876; 39 U. S. App. 95] 18: 375

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[70 Fed. 816; 25 U. S. App. 475] 17: 430

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[58 Fed. 401; 17 U. S. App. 195] 7: 275

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[55 Fed. 982; 14 U. S. App. 312] 5: 371

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- Large sales of patented machine, as evidence of novelty.  
[52 Fed. 205; 6 U. S. App. 200] 3: 32
- Copies of patent office records of assignment, prima facie proof.  
[60 Fed. 1016; 26 U. S. App. 7] 9: 336
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- To show anticipation in American market of owner of trademark in foreign country.  
[82 Fed. 321; 53 U. S. App. 425] 27: 351
- Change from entirely different style of package to one resembling plaintiff's not conclusive of infringement of trademark.  
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[66 Fed. 977; 24 U. S. App. 636] 14: 213
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[79 Fed. 756; 51 U. S. App. 216; 35 L. R. A. 400] 25: 648
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- See EQUITY.

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- Del credere* commission, commissions when principal unable wholly to fulfil contract. [77 Fed. 541; 42 U. S. App. 214] 23: 276
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[54 Fed. 320; 7 U. S. App. 565] 4: 357

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in his interest. [84 Fed. 430; 51 U. S. App. 693] 28: 443

Liability of third person for making false representations to induce purchase  
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[76 Fed. 108; 40 U. S. App. 188] 22: 83

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[66 Fed. 35; 27 U. S. App. 643] 13: 315
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[78 Fed. 21; 41 U. S. App. 714] 23: 624
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[50 Fed. 737; 4 U. S. App. 406] 1: 642
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[57 Fed. 685; 18 U. S. App. 256; 24 L. R. A. 417] 6: 508
- Right to recover the property after receiving from the fraudulent grantee the consideration for a sale to third party.  
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- Fraudulent purchase of goods, chattel mortgagee of buyer as innocent purchaser. [82 Fed. 799; 49 U. S. App. 596] 27: 171
- Notice to bailee in possession of mortgaged chattels indispensable to delivery to mortgagee. [97 Fed. 735] 38: 395
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**What constitutes, generally.**

- Use of nonexempt property to procure title to homestead in debtor's own name.  
[79 Fed. 706; 49 U. S. App. 228] 25: 151
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- Inference of fraud from excessive value over price, how rebutted. [50 Fed. 737; 4 U. S. App. 406] 1: 642
- Excessive mortgage by failing debtor presumptively fraudulent. [54 Fed. 696; 12 U. S. App. 174] 4: 554
- Creditor purchasing more than sufficient to pay, and giving cash or notes for excess. [91 Fed. 614; 63 U. S. App. 614] 34: 28

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- Preference in conveyance, as badge of fraud. [54 Fed. 43; 8 U. S. App. 347] 4: 177
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- Rule for determining whether fraudulent preference operates as assignment. [62 Fed. 335; 22 U. S. App. 267] 10: 393

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- Notice of grantor's fraudulent purpose. [54 Fed. 867; 6 U. S. App. 403] 4: 629
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[72 Fed. 289; 36 U. S. App. 547] 18: 565

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[72 Fed. 299; 36 U. S. App. 543] 18: 572

[66 Fed. 371; 30 U. S. App. 8] 13: 518

[68 Fed. 729; 30 U. S. App. 8] 15: 631

Suit by citizens of, against citizen of state, see

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[61 Fed. 757; 27 U. S. App. 96] 10: 41

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[63 Fed. 417; 27 U. S. App. 305] 11: 271

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[97 Fed. 863] 38: 508

**INDICTMENT AND INFORMATION.**

See also EXTRADITION.

Charging offense substantially in language of statute.

[94 Fed. 127] 36: 105

When necessary to negative exception in statute generally.

[81 Fed. 694; 48 U. S. App. 376] 26: 370

Information not equivalent of indictment in extradition proceedings.

[63 Fed. 249; 25 U. S. App. 22; 28 L. R. A. 801] 11: 165

Technical defect in; effect on extradition proceedings.

[79 Fed. 616; 49 U. S. App. 163] 25: 133

Sufficiency tested by ascertaining whether defendant sufficiently apprised of what he must meet. [94 Fed. 127] 36: 105

## INDICTMENT AND INFORMATION—continued.

Sufficiency tested by ascertaining whether record sufficiently shows extent to which former acquittal or conviction may be pleaded. Id.

Test of sufficiency of, for purposes of extradition.

[79 Fed. 616; 49 U. S. App. 163] 25: 133

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[63 Fed. 249; 25 U. S. App. 22; 28 L. R. A. 801] 11: 165

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Incorporating averments of one count in other count.

[94 Fed. 127] 36: 105

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[87 Fed. 172; 58 U. S. App. 219] 30: 596

Amendments of certain counts without re-arraignment cured by arrest of judgment on such counts. Id.

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[99 Fed. 942] 40: 194

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[86 Fed. 456; 57 U. S. App. 1] 30: 186

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[66 Fed. 280; 30 U. S. App. 90] 13: 436

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[75 Fed. 986; 43 U. S. App. 678; 34 L. R. A. 509] 21: 586

Effect of consolidation on sentence. Id.

**Allegations as to time.**

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[94 Fed. 127] 36: 105

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[79 Fed. 616; 49 U. S. App. 163] 25: 133

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[91 Fed. 494; 62 U. S. App. 550] 33: 652

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[88 Fed. 253; 60 U. S. App. 20] 31: 521

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[91 Fed. 497; 63 U. S. App. 365] 33: 655

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[86 Fed. 456; 57 U. S. App. 1] 30: 186

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[94 Fed. 127] 36: 105

Sufficiency of allegation of appropriation by bank officer to own use.

[97 Fed. 208] 38: 115

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[82 Fed. 904; 49 U. S. App. 605] 27: 140

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[96 Fed. 837] 37: 588

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[85 Fed. 204; 54 U. S. App. 582] 30: 74

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[82 Fed. 990; 55 U. S. App. 42] 27: 294

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[87 Fed. 324; 58 U. S. App. 729] 30: 670

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[63 Fed. 426; 24 U. S. App. 25] 12: 339

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- For assaulting Federal officer while executing warrant. [71 Fed. 286; 33 U. S. App. 376] 18: 117
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**Variance.**

- Between allegations of using mails under false name and proof of using name of real person. [87 Fed. 320; 58 U. S. App. 140] 30: 666
- Allegation that money extorted from one person not variant from evidence that he obtained the money from another for defendant. [93 Fed. 396] 35: 369

**INDORSEMENT.**

- Of Bill or Note, see **BILLS AND NOTES.**
- Of allowance on writ of error. [54 Fed. 920; 2 U. S. App. 647] 4: 670
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**INFANTS.**

See also **ADOPTION; GUARDIAN AND WARD.**

Contributory Negligence Of and Towards Infants, see **MASTER AND SERVANT; NEGLIGENCE; RAILROADS.**

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- Right to make infants partners. [50 Fed. 898; 4 U. S. App. 399] 2: 76
- Minor not bound by contract with father exempting carrier from liability for injuries except from gross negligence. [92 Fed. 318] 34: 365
- Preferring infants as badge of fraud. [50 Fed. 898; 4 U. S. App. 399] 2: 76
- Right of infants to be preferred in assignment for creditors. Id.
- Encumbering property of infant. [53 Fed. 854; 9 U. S. App. 406] 4: 55
- Sale of infant's interest in land in lieu of partition. [53 Fed. 86; 6 U. S. App. 348] 3: 443
- Power to sell infant's real estate, strict compliance. Id.
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- Act curing defective sale, see Note, 39: 184
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- Judgment against; attacking rights of; third persons.
- Enlisting in army without parent's consent, subject to court-martial on desertion. [87 Fed. 318; 59 U. S. App. 52] 30: 664
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- Determining custody of, by habeas corpus, see Note, 25: 31
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**INFORMATION.**

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**INFRINGEMENT.**

Of Copyright, see COPYRIGHT.

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**INHABITANTS.**

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**INJUNCTION.**

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Jurisdiction, on Appeal, of Circuit Court of Appeals, see COURTS.

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For Parties to Suit, see PARTIES.

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[59 Fed. 913; 8 U. S. App. 496] 8: 365

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[69 Fed. 852; 25 U. S. App. 383; 30 L. R. A. 90] 16: 516

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[70 Fed. 429; 25 U. S. App. 443] 17: 175

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[56 Fed. 654; 18 U. S. App. 42] 6: 58

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[54 Fed. 554; 13 U. S. App. 180] 4: 510

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[67 Fed. 1000; 37 U. S. App. 71] 15: 153

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[66 Fed. 334; 25 U. S. App. 227; 27 L. R. A. 67] 13: 593

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[74 Fed. 664; 41 U. S. App. 165] 20: 674

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[92 Fed. 214] 34: 304

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[71 Fed. 339; 37 U. S. App. 478] 18: 137

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[94 Fed. 6] 36: 52

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[56 Fed. 756; 9 U. S. App. 559] 6: 105

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[94 Fed. 6] 36: 52

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[56 Fed. 366; 12 U. S. App. 359] 5: 522

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[78 Fed. 28; 49 U. S. App. 17; 37 L. R. A. 630] 23: 631

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Id.

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[71 Fed. 58; 36 U. S. App. 255] 17: 570

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[55 Fed. 895; 14 U. S. App. 336; 20 L. R. A. 733] 5: 305

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[54 Fed. 439; 12 U. S. App. 193] 4: 425

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[95 Fed. 637] 37: 210

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- Suit to enjoin trespass, setting out chain of title. [58 Fed. 485; 8 U. S. App. 429] 7: 330
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- Against trespass, requiring defendant to bring action at law to determine title. Id.
- Against trespass on land by large number of persons. [89 Fed. 769; 61 U. S. App. 13] 32: 470
- To restrain trespasser from working and removing mineral from mine. [94 Fed. 266] 36: 347
- Against mining coal under lease obtained through fraud or mistake. [68 Fed. 86; 32 U. S. App. 330] 15: 270
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- Sufficiency of bill against diversion from stream. Id.
- Restraining pollution of watercourses, see Note. 37: 544
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- Restraining combination from preventing shipping a crew. [56 Fed. 696; 13 U. S. App. 354] 6: 86
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Id.

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**Corporations.**

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[51 Fed. 381; 4 U. S. App. 438] 2: 286

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[70 Fed. 129; 36 U. S. App. 167] 17: 16

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[55 Fed. 356; 14 U. S. App. 210] 5: 129

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[58 Fed. 644; 19 U. S. App. 203; 24 L. R. A. 776] 7: 412

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[92 Fed. 721] 34: 625

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[68 Fed. 972; 29 U. S. App. 731] 16: 74

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Who may maintain, Federal court following state court decision as to.

[80 Fed. 9; 53 U. S. App. 1] 25: 304

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[54 Fed. 925; 2 U. S. App. 488] 5: 1

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[98 Fed. 907] 39: 345

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[80 Fed. 601; 53 U. S. App. 284] 26: 21

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[86 Fed. 189; 57 U. S. App. 724] 29: 655

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Abutting owner, to restrain construction of switch in street.

[84 Fed. 46; 53 U. S. App. 673] 28: 274

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[96 Fed. 113] 37: 410

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Against appropriation of land for street, in case of fraud or failure to comply with statutory requirements.

[99 Fed. 838] 40: 117

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[54 Fed. 925; 2 U. S. App. 488] 5: 1

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[79 Fed. 715; 49 U. S. App. 266] 25: 161

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Federal court enjoining proceeding in state court to render own decree effective.

[98 Fed. 489] 39: 126

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[99 Fed. 18] 40: 47

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[74 Fed. 759; 40 U. S. App. 117] 21: 78

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[54 Fed. 554; 13 U. S. App. 180] 4: 510



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- Restraining proceedings in state courts, see Notes, 16: 90; 27: 575  
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     [59 Fed. 1; 16 U. S. App. 325] 7: 598  
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     [100 Fed. 344] 40: 394  
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     [97 Fed. 136] 38: 75  
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     [67 Fed. 833; 33 U. S. App. 91] 16: 86  
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     [93 Fed. 280] 35: 295  
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     [76 Fed. 25; 40 U. S. App. 302] 22: 25  
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     [67 Fed. 597; 20 U. S. App. 564] 14: 561  
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     [56 Fed. 756; 9 U. S. App. 559] 6: 105  
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     [60 Fed. 316; 19 U. S. App. 576] 8: 635  
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     [98 Fed. 489] 39: 126

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- To restrain attachment, consolidation with suit to aid.  
     [75 Fed. 636; 43 U. S. App. 640] 21: 466  
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 ulent conveyance. [53 Fed. 961; 12 U. S. App. 69] 4: 116  
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     [55 Fed. 885; 12 U. S. App. 242] 5: 293  
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**INJUNCTION—continued.**

- Against judgment of state court, property affected used as highway for interstate commerce. [83 Fed. 540; 53 U. S. App. 647] 27: 57
- Against enforcement of default judgment. [74 Fed. 23; 46 U. S. App. 103] 20: 274
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- Receiver's possession of property no ground for enjoining enforcement. [73 Fed. 562; 43 U. S. App. 214] 19: 563
- Against enforcement of judgment in pursuance of mandate on appeal. Id.
- Removal to Federal court by one on whom notice of motion to restrain violation of injunction decree served. [99 Fed. 598] 39: 669
- Enjoining, in Federal court, judgment of state court, see Note, 16: 95

**Copyright.**

- Against publication by state of new compilation of its laws, as infringement. [91 Fed. 129; 62 U. S. App. 17] 33: 407
- Against sale of annotated edition of state laws as infringement. Id.
- Against sale of city directory for infringement. [66 Fed. 977; 24 U. S. App. 636] 14: 213
- To enforce restriction of sale of copyrighted books. [61 Fed. 689; 26 U. S. App. 99] 10: 17
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- Laches as a defense in suit for infringement, see Notes, 22: 211; 36: 613
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**Trademarks—In general.**

- Sufficiency of bill where right to exclusive use of not established. [94 Fed. 667] 35: 237
- Action for, admissibility of registration of trademark. [59 Fed. 572; 17 U. S. App. 352] 8: 215  
[59 Fed. 577; 17 U. S. App. 427] 8: 220
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- Competition resting on difference in price. [86 Fed. 956; 57 U. S. App. 565] 30: 496
- Exclusive right in words or labels used not necessary to obtain. [86 Fed. 608; 58 U. S. App. 490; 41 L. R. A. 162] 30: 386
- Against deceptive imitation of foreign manufacturer's trademark not prevented by sale of similar American preparation under nonimitative label. [74 Fed. 225; 26 U. S. App. 784; 45 U. S. App. 184] 20: 161
- Use of capsule on wine bottle, of same color and size, but without embossing. [91 Fed. 126; 62 U. S. App. 284] 33: 404
- Preliminary, against use of deceptive wrapper on proprietary medicine, after expiration of patent. [91 Fed. 891; 62 U. S. App. 557] 34: 118  
[91 Fed. 901; 62 U. S. App. 576] 34: 127
- Labels not calculated to deceive not enjoined, regardless of intention of person using. [97 Fed. 785] 38: 413
- Against use of "Dr. Stewart's dyspepsia tablets" by owner of trademark "Stuart's dyspepsia tablets." [91 Fed. 243; 63 U. S. App. 561] 33: 480

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- Preliminary, against imitation of packages, stamps, and letters.  
[90 Fed. 814; 61 U. S. App. 454] 33: 28
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[74 Fed. 225; 26 U. S. App. 784; 45 U. S. App. 184] 20: 161
- Use of imitative labels and devices in connection with inferior article.  
[78 Fed. 472; 47 U. S. App. 250] 24: 173
- Similarity must be such as will apparently deceive ordinary purchaser.  
[89 Fed. 706; 61 U. S. App. 22] 32: 324
- When denied notwithstanding intent to simulate.  
[77 Fed. 869; 45 U. S. App. 190] 23: 554
- When similarity insufficient to authorize relief.  
[86 Fed. 956; 57 U. S. App. 565] 30: 496
- When granted notwithstanding distinctive differences.  
[77 Fed. 869; 45 U. S. App. 190] 23: 554
- Against unfair competition in absence of bad faith or imitative devices.  
[86 Fed. 605; 58 U. S. App. 30] 30: 383
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[86 Fed. 608; 58 U. S. App. 490; 41 L. R. A. 162] 30: 386
- Restraining infringement, although no wrong intended. [93 Fed. 196] 35: 267
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[77 Fed. 869; 45 U. S. App. 190] 23: 554
- Against more prominent use of single word of trademark by person entitled to use such word alone.  
[63 Fed. 443; 24 U. S. App. 172] 11: 282
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[97 Fed. 785] 38: 413
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[88 Fed. 642; 50 U. S. App. 394] 32: 77
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[58 Fed. 884; 18 U. S. App. 372] 7: 558  
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- Objection that defendant is acting as agent for nonresident.  
[80 Fed. 889; 51 U. S. App. 421] 26: 220
- Interlocutory decree against principal, conclusiveness against latter's agent. Id.

## —Geographical name.

- Against use of geographical name. [73 Fed. 818; 43 U. S. App. 243] 20: 27
- Against imitative combination of geographical name with other words. Id.
- Against sale under geographical name of inferior flour manufactured elsewhere.  
[86 Fed. 608; 58 U. S. App. 490; 41 L. R. A. 162] 30: 386
- By owner of mill outside city, against improper use of city's name on flour manufactured elsewhere. Id.

## —What prevents relief.

- Denial of, in case of misrepresentation and deceit by plaintiff.  
[54 Fed. 175; 7 U. S. App. 588] 4: 264
- Trademark speaking untruth. [85 Fed. 231; 55 U. S. App. 575] 29: 245
- Denial because of misrepresentation in trademark alleged to be infringed.  
[57 Fed. 938; 17 U. S. App. 145] 6: 647
- What constitutes misrepresentation, preventing relief.  
[74 Fed. 936; 45 U. S. App. 62] 21: 178
- Misleading statement on label as to place of preparing.  
[74 Fed. 225; 26 U. S. App. 784; 45 U. S. App. 184] 20: 161
- Inaccuracy of immaterial statements in plaintiff's label, not prevent.  
[76 Fed. 959; 45 U. S. App. 143] 22: 644
- Use of misleading or false labels, see Note, 29: 250
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[73 Fed. 812; 43 U. S. App. 234; 33 L. R. A. 56] 20: 22

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City selling as "Carlsbad Sprudel Lozenges" goods containing 90 per cent of sugar not fraud preventing relief. [71 Fed. 167; 35 U. S. App. 750] 18: 24

Trademark applied to quack medicines. [59 Fed. 572; 17 U. S. App. 352] 8: 215

To protect trademark of medicinal preparation asserting manifest falsehood. *Id.*

Illegal assumption of corporate existence. [63 Fed. 438; 24 U. S. App. 162] 11: 277

Corporation succeeding to firm, using firm's trademark, with addition "successor." [64 Fed. 841; 24 U. S. App. 395] 12: 432

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[74 Fed. 225; 26 U. S. App. 784; 45 U. S. App. 184] 20: 161

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[70 Fed. 1019; 35 U. S. App. 848] 17: 575

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[90 Fed. 136; 61 U. S. App. 487] 32: 536

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- Failure to disclose diseases resulting from diseases disclosed.  
[91 Fed. 487; 62 U. S. App. 625] 33: 365
- Question for jury whether malady existed where no two of several physicians consulted agreed as to particular malady. [100 Fed. 719] 40: 665
- False answer as to attendance by physician.  
[60 Fed. 727; 20 U. S. App. 337] 9: 252
- False statement that applicant has had no physician.  
[86 Fed. 102; 58 U. S. App. 482] 29: 596

**INSURANCE—continued.**

- Slight and temporary indisposition not within question as to how long since insured consulted or was attended by physicians. [100 Fed. 719] 40: 665
- Stating particulars as to grounds for obtaining pension, so far as memory serves. [82 Fed. 980; 44 U. S. App. 282] 19: 331
- Question for jury as to truth of statement as to occupation. [76 Fed. 705; 44 U. S. App. 694] 22: 499
- Statement that applicant's occupation is bank teller, without disclosing habitual embezzlement. [72 Fed. 413; 37 U. S. App. 692; 38 L. R. A. 33] 19: 286
- Thefts or embezzlements not within general statement as to applicant's habits. Id.
- Failure to disclose that insured has enemies. [73 Fed. 444; 44 U. S. App. 492] 19: 519
- That insured will not die by his own hand. [71 Fed. 843; 38 U. S. App. 37] 18: 322
- Affidavits of neighbors on previous application by insured for pension, inadmissible. [82 Fed. 980; 44 U. S. App. 282] 19: 331
- Physician's report on application for pension, to show falsity of statements in subsequent application for policy, inadmissible. Id.
- Evidence of statements by insured at time of prior application for pension, inadmissible. Id.
- Parol evidence explaining answer written by examining physician. Id.
- Presumption as to correctness of abstract of application and medical examination contained in policy. [86 Fed. 102; 58 U. S. App. 482] 29: 596

**—Policies on property.**

- Waiver as to, see *infra*, VI.
- Warranty as to keeping and method of preserving inventory and books; what is; effect of breach. [78 Fed. 278; 41 U. S. App. 694] 24: 85
- Iron-safe clause condition subsequent, and substantial compliance sufficient. [68 Fed. 708; 30 U. S. App. 442] 15: 619
- Duty as to producing books and inventory under iron-safe clause. [94 Fed. 314] 36: 265
- Option to keep books and inventory in safe or in other secure place under iron-safe clause. Id.
- Person having insurable interest stating that he is owner. [89 Fed. 932; 61 U. S. App. 276] 32: 426
- Sole stockholders of owner represented as owner. [65 Fed. 165; 27 U. S. App. 564; 27 L. R. A. 614] 12: 531
- What constitutes "unconditional ownership" of crop of hay. [89 Fed. 932; 61 U. S. App. 276] 32: 426
- Acceptance of policy containing stipulation of insured's sole ownership not representations of such interest. Id.
- Insurance on goods in railroad warehouse not invalidated by transfer of interest by company prior to receivership. [89 Fed. 131; 59 U. S. App. 499] 32: 173
- Commencement of manufacturing, increase of risk, questions for jury. [58 Fed. 166; 8 U. S. App. 451] 7: 144
- Increasing risk by erecting other building near. [65 Fed. 773; 25 U. S. App. 119] 13: 124
- Occupying building without notice of completion. Id.

**Forfeiture—In general.**

- Act preventing forfeiture for misrepresentations in good faith, valid. [72 Fed. 413; 37 U. S. App. 692; 38 L. R. A. 33] 19: 286
- For failure to disclose facts learned after original representations, but before contract closed. [83 Fed. 631; 49 U. S. App. 548] 28: 365
- Right to make reasonable stops when permitted to travel through prohibited territory. [93 Fed. 148; 60 U. S. App. 288] 35: 232

**INSURANCE—continued.**

Whether interruption of permitted journey through prohibited territory proper, question for jury. Id.

Effect of irregular suspension from which no appeal taken. [66 Fed. 785; 30 U. S. App. 234] 14: 264

**—For nonpayment of premiums, generally.**

Life; forfeiture for nonpayment of premiums; what law governs. [60 Fed. 690; 20 U. S. App. 410] 9: 215

Necessity of formal action by insurer. [82 Fed. 508; 54 U. S. App. 290] 27: 212

Statutory conditions of; power of company and assured to waive. [83 Fed. 85; 48 U. S. App. 565] 27: 404

Giving note for premium to agent unauthorized to postpone payment. [63 Fed. 769; 28 U. S. App. 48] 11: 411

Failure to perform illegal condition on which premium note extended by agent. [90 Fed. 779; 62 U. S. App. 223] 33: 274

Default after injury causing death. [61 Fed. 816; 18 U. S. App. 704; 26 L. R. A. 112] 10: 94

Secretary of local section, agent of board of control to receive assessment from members. [89 Fed. 160; 59 U. S. App. 177] 32: 182

**—Notice as to premium before forfeiture.**

Law of domicile of insurer, or of residence of applicant, governing as to notice before forfeiture. [83 Fed. 85; 48 U. S. App. 565] 27: 404

Policy not forfeited where notice not given. [97 Fed. 263] 38: 159

Provision of New York statute requiring notice, mandatory. [100 Fed. 408] 40: 459

Notice as condition of; power of parties to waive. [81 Fed. 796; 48 U. S. App. 482] 26: 620

Neither party power to waive statutory requirement of notice. [97 Fed. 263] 38: 159

Beneficiaries not estopped to claim payment where notice, notwithstanding attempted waiver by insured. Id.

Provision requiring notice, not affected by parol statement of insured after default. [100 Fed. 408] 40: 459

Notice as condition of, when insured resides in another state. [81 Fed. 796; 48 U. S. App. 482] 26: 620

Such provision of extra-territorial effect. [100 Fed. 408] 40: 459

What term policy, not requiring notice. [96 Fed. 721; 46 L. R. A. 473] 37: 566

Term policy forfeited, though no notice given, after repeal of act requiring notice. Id.

Repeal of act requiring notice before forfeiture not impair obligation of contracts. Id.

Sufficiency of evidence as to giving notice. [73 Fed. 144; 44 U. S. App. 316] 19: 414

Sufficiency to show giving of notice of maturity of premium. Id.

Relying on statute requiring notice, under allegation of compliance with policy. [97 Fed. 263] 38: 159

Properly addressing and mailing notice sufficient to authorize forfeiture for nonpayment of premium. [92 Fed. 769] 34: 663

Affidavit as to mailing and addressing notice, rebutting presumption from. [81 Fed. 796; 48 U. S. App. 482] 26: 620

Time for serving notice as to premiums. [60 Fed. 690; 20 U. S. App. 410] 9: 215

Notice sent less than thirty days before premium due. [93 Fed. 153] 35: 245

Notice mailed Sept. 1, of premium maturing Oct. 1, not good as thirty days' notice. [96 Fed. 721; 46 L. R. A. 473] 37: 566

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**INSURANCE—continued.****Reinstatement.**

- Time within which allowable on paying arrearages.  
[89 Fed. 941; 61 U. S. App. 617] 32: 436
- Acceptance of receipt for overdue premium not guaranty of good health.  
[88 Fed. 440; 60 U. S. App. 88] 31: 575
- Necessity of new agreement to revive lapsed life policy.  
[83 Fed. 631; 49 U. S. App. 548] 28: 365
- Compliance with conditions of reinstatement in beneficial association; failure to issue certificate of reinstatement.  
[80 Fed. 202; 46 U. S. App. 746] 25: 378

**Premiums.**

- Forfeiture for nonpayment, see *supra*, **Forfeiture**.
- Waiver as to, see *infra*, VI.
- Implied authority of agent to accept notes for.  
[87 Fed. 637; 57 U. S. App. 18] 31: 172
- Insured not bound by unknown rule forbidding agents taking premium notes.  
Id.
- Payment of premium by draft; recovering back payment.  
[60 Fed. 197; 13 U. S. App. 597] 8: 558
- Enforcing forfeiture for misrepresentation without tendering premiums back.  
[92 Fed. 503] 34: 506
- Terms of contract on which insured obtains from third person money for paying premium, no defense.  
[98 Fed. 251] 39: 56

**V. ASSIGNMENT; CHANGE OF BENEFICIARY.**

- Change of beneficiary, in general, see Note, 40: 4
- Under by-law permitting change, see Note, 40: 5
- Payment of dues by beneficiary, see Note, 40: 6
- Interest of beneficiary, see Note, 40: 4
- Designation of substituted beneficiary, see Note, 40: 8
- No vested interest in original beneficiary where policy permits change without his consent.  
[99 Fed. 199] 40: 1
- Validity of; wife's refusal to acknowledge her signature to consent.  
[82 Fed. 508; 54 U. S. App. 290] 27: 212
- Certificate on co-operative or assessment plan; assignment without consent of payees or beneficiaries.  
Id.
- Relative rights of assignee and third persons.  
[58 Fed. 633; 19 U. S. App. 256] 7: 391
- Rights of assignee; notice to third persons.  
Id.
- Rights and liabilities of assignee, see Note, 39: 637
- Of life policy; right of assignee to maintain action in own name.  
[84 Fed. 278; 55 U. S. App. 598] 27: 390
- Condition as to assignments not applicable to payee of policy.  
[63 Fed. 93; 22 U. S. App. 386, 548] 11: 42
- Insurable interest of assignee, see Note, 39: 636
- Assignee having insurable interest when assignment made, entitled to recover.  
[99 Fed. 64] 39: 625

**VI. WAIVER; ESTOPPEL.****In general.**

- Stipulation requiring any change to be made in writing; changing stipulation itself by parol.  
[82 Fed. 508; 54 U. S. App. 290] 27: 212
- Of false statements by failing to exercise option to avoid after knowledge of falsity.  
[83 Fed. 647; 49 U. S. App. 690] 27: 658
- Of imperfect answer by issuing policy.  
[60 Fed. 236; 23 U. S. App. 103] 8: 594

**INSURANCE—continued.**

- Of insurance company to deny that preliminary oral agreement actual contract. [87 Fed. 63; 57 U. S. App. 638] 30: 532
- Of application of rule known to be frequently violated by subagent. [87 Fed. 637; 57 U. S. App. 18] 31: 172
- Insurer estopped to assert invalidity for known violation of conditions. [94 Fed. 990] 36: 615
- Of option to declare forfeiture by recognizing claim and negotiating for settlement. [83 Fed. 647; 49 U. S. App. 690] 27: 658
- Requiring proofs of loss or treating for settlement, not waive defense unknown at time. [95 Fed. 358] 37: 96
- By acceptance of premiums, see Note, 33: 369
- By demanding and receiving premium after defense known. [91 Fed. 487; 62 U. S. App. 625] 33: 365
- To set up defense of overinsurance by not tendering back premium paid. [95 Fed. 358] 37: 96
- Estoppel as between insurer and third person; adjustment of loss. [57 Fed. 243; 14 U. S. App. 506] 6: 320
- As to health or habits, see Note, 33: 385
- Of condition as to time for bringing suit, see Notes, 2: 473; 35: 410

**Knowledge or fraud of agent.**

- Effect as waiver of incorrect answer. [76 Fed. 705; 44 U. S. App. 694] 22: 499
- Provision in policy against waiver by agent. Id.
- Limitation on agent's power to waive, valid. [66 Fed. 490; 30 U. S. App. 127] 14: 33
- Authority of insurance agent to waive conditions, see Note, 13: 292
- Restriction of powers of officers and representatives having apparent authority. [82 Fed. 986; 42 U. S. App. 659] 27: 344
- Agent's abbreviation or omission of part of answer. [58 Fed. 723; 19 U. S. App. 266; 22 L. R. A. 325] 7: 444
- Incorrect answers inserted by agent after full disclosure of facts. [77 Fed. 94; 40 U. S. App. 530] 23: 43
- False statements by agent as to contents or legal effect of policy which insured had opportunity to read. [99 Fed. 856] 40: 119
- Correct statement to agent; wrong construction by him. [58 Fed. 723; 19 U. S. App. 266; 22 L. R. A. 325] 7: 444
- Parol evidence admissible to show that misdescription in policy was made by agent who knew the facts. [85 Fed. 125; 42 U. S. App. 728] 30: 95
- To rely on misdescription of property when application prepared by agent. Id.
- Application filled out by insurer's agent and signed by applicant. [78 Fed. 566; 47 U. S. App. 322] 24: 239
- Agent's knowledge acquired as attorney for insured. [71 Fed. 473; 34 U. S. App. 397] 18: 203
- Wrong classification under accident insurance. [58 Fed. 342; 12 U. S. App. 704] 7: 264
- Agent's classification binding. [59 Fed. 559; 19 U. S. App. 304] 8: 213
- Admissibility of evidence to show agents' custom to give credit on first premium. [65 Fed. 765; 31 U. S. App. 163] 13: 284
- Nonpayment of premium by agents' accepting overdue premiums without guaranty of health of insured. [88 Fed. 440; 60 U. S. App. 88] 31: 575
- By insurance agent's knowledge of encumbrance. [94 Fed. 990] 36: 615
- Disclosure of encumbrance to agent; insertion of false answer by him. [79 Fed. 245; 48 U. S. App. 344] 24: 547
- Condition against encumbrances waived by delivery of policy by agent with knowledge thereof. [92 Fed. 500] 34: 503



**INSURANCE—continued.**

- Knowledge of agent of insured's intention to take out other insurance.  
     [82 Fed. 406; 53 U. S. App. 517] 27: 42  
     [94 Fed. 990] 36: 615
- Of condition as to other insurance by agent's knowledge of additional insurance intended by insured. [69 Fed. 71; 32 U. S. App. 490] 16: 136
- Knowledge of concurrent insurance in excess of amount allowed.  
     [100 Fed. 391] 40: 441
- Condition as to application for other insurance not waived by agent's knowledge. [92 Fed. 503] 34: 506
- By statement of insurance solicitor as to time policies insure for.  
     [87 Fed. 63; 57 U. S. App. 638] 30: 532
- By agent's representation that policy renewed.  
     [71 Fed. 81; 36 U. S. App. 277] 17: 608

**Matters about property insured.**

- As to title, see Note, 33: 381
- As to encumbrances, see Note 33: 383
- By disclosure of encumbrance to agent and insertion of false answer by him.  
     [79 Fed. 245; 48 U. S. App. 344] 24: 547
- By delivery of policy by agent with knowledge of encumbrance.  
     [92 Fed. 500] 34: 503
- Parol evidence to show knowledge of existence of encumbrance.  
     [94 Fed. 990] 36: 615
- As to increase of risk, see Note, 33: 381
- As to change of residence or occupation, see Note, 33: 385

**As to premiums.**

- As to payment of premium. [83 Fed. 631; 49 U. S. App. 548] 28: 365
- As to nonpayment of premiums, see Note, 33: 369
- Course of dealing excusing delay in payment.  
     [63 Fed. 769; 28 U. S. App. 48] 11: 411  
     [80 Fed. 497; 39 U. S. App. 599] 25: 593
- Oral representations inducing failure to pay premiums promptly.  
     [82 Fed. 508; 54 U. S. App. 290] 27: 212
- Delay in tendering back premium paid to local bank holding receipt, after time due. [92 Fed. 769] 34: 663
- Sufficiency of evidence to show company's knowledge of agent's practice to give credit. [65 Fed. 765; 31 U. S. App. 163] 13: 284
- Waiver of prepayment of insurance premiums, see Note, 13: 292
- Evidence of general custom of general agents to grant credit on first premium.  
     [65 Fed. 765; 31 U. S. App. 163] 13: 284
- Agent's monthly reports admissible to show practice of delivering policies before payment. Id.
- Of provision requiring payment of premium before taking effect, by agent's delivery. Id.
- By agent's accepting overdue premiums without guaranty of health of insured.  
     [88 Fed. 440; 60 U. S. App. 88] 31: 575
- Allowance of premium note as claim against estate not binding on insurance company. [87 Fed. 637; 57 U. S. App. 18] 31: 172
- Waiver of forfeiture for delay in paying assessment, by course of dealing.  
     [75 Fed. 65; 44 U. S. App. 527] 21: 227
- Waiver of forfeiture for failure to pay call by new assessment. Id.
- Effect of warning to the contrary in notice. Id.
- Financial ability of insured immaterial on issue as to waiver of forfeiture for nonpayment of assessment. [93 Fed. 747] 35: 573
- Agreement with assignee to continue policy after default by assured; to whom available. [82 Fed. 508; 54 U. S. App. 290] 27: 212

**INSURANCE—continued.****As to other insurance.**

- Of condition as to other insurance, see Notes, 27: 46; 33: 382
- Of condition against additional insurance when inferred.  
[66 Fed. 490; 30 U. S. App. 127] 14: 33
- By agent's knowledge that insured intended to procure.  
[69 Fed. 71; 32 U. S. App. 490] 16: 136  
[82 Fed. 406; 53 U. S. App. 517] 27: 42
- Solicitor's knowledge of concurrent insurance in excess of amount allowed.  
[100 Fed. 391] 40: 441
- Condition as to application for other insurance not waived by agent's knowledge.  
[92 Fed. 503] 34: 506
- Agent's representation that taking certain policy will not conflict with carrying other insurance.  
[71 Fed. 473; 34 U. S. App. 397] 18: 203
- Parol evidence to show knowledge of existence of other insurance.  
[94 Fed. 990] 36: 615

**As to proofs of loss.**

- By denial of all liability. [58 Fed. 144; 19 U. S. App. 24] 7: 122
- Declaring policy forfeited and entering it as lapsed.  
[58 Fed. 541; 19 U. S. App. 173] 7: 359
- By not replying to letter asking if further information required.  
[95 Fed. 111] 36: 671
- Making thorough investigation before receiving.  
[74 Fed. 507; 42 U. S. App. 81] 20: 630
- Of disqualification of notary to give certificate to accompany proofs of loss. Id.
- Evidence of waiver of proofs of loss under allegations. Id.

**As to arbitration.**

- Of provision for arbitration by failure to demand.  
[67 Fed. 483; 32 U. S. App. 230] 14: 485
- Of separate appraisal, by demand for joint one.  
[61 Fed. 379; 22 U. S. App. 164] 9: 530
- By denial or admission of liability, see Note, 39: 391
- By accepting proofs of loss, see Note, 39: 391

**VII. THE LOSS; REMEDIES.****In general.**

- When release of company by beneficiary fraudulent.  
[90 Fed. 395; 61 U. S. App. 691] 33: 121
- Time for payment of loss; no right to extend by waiting long time before objecting to proofs of loss.  
[61 Fed. 379; 22 U. S. App. 164] 9: 530
- Evidence admissible to show that goods still held by plaintiff as carrier when destroyed.  
[89 Fed. 131; 59 U. S. App. 499] 32: 173

**Notice and proofs of loss.**

- Waiver as to, see *supra*, VI.
- Accident; notice necessary in case of death from accident.  
[85 Fed. 401; 56 U. S. App. 393; 40 L. R. A. 653] 29: 223
- Notice of slight wound producing lockjaw after time to give notice.  
[70 Fed. 16; 34 U. S. App. 285] 16: 596
- What will excuse giving proofs of loss. [74 Fed. 507; 42 U. S. App. 81] 20: 630
- Sufficiency as to value of property and amount of loss.  
[62 Fed. 222; 8 U. S. App. 554] 10: 342
- What constitutes; requirement of magistrate's certificate of loss. Id.
- Magistrate's certificate as to loss; magistrate related to insured. Id.
- Notary related to insured, disqualified to give certificate to company.  
[74 Fed. 507; 42 U. S. App. 81] 20: 630

**INSURANCE—continued.**

- Conclusiveness of statements in, as to cause of death.  
     [65 Fed. 178; 27 U. S. App. 547; 27 L. R. A. 629] 12: 544  
 Effect of statement that insured committed suicide. [94 Fed. 751] 36: 467  
 Allegation that proofs of loss served thirty days before suit.  
     [73 Fed. 444; 44 U. S. App. 492] 19: 519  
 Refusal of request to examine body after burial.  
     [68 Fed. 873; 32 U. S. App. 444] 16: 51

**Appraisal and arbitration.**

- Waiver as to, see *supra*, VI.  
 Conditions of policy; arbitration, see Note, 9: 628  
 Provisions in policy for, see Note, 39: 389  
 Question for jury whether demand for separate appraisal within reasonable time.  
     [61 Fed. 379; 22 U. S. App. 164] 9: 530  
 Agreement for arbitration as condition precedent.  
     [61 Fed. 752; 21 U. S. App. 228] 9: 623  
 As condition precedent to action; duty to obtain.  
     [59 Fed. 258; 16 U. S. App. 366] 8: 114  
 Joint demand for, by several companies. Id.  
 Jurisdiction of action to set aside award; amount involved.  
     [56 Fed. 378; 15 U. S. App. 134] 5: 524  
 Setting aside award because of mode of making. Id.  
 Arbitrator or umpire; concurrence and decision. Id.  
 Irregular appraisal not binding. [71 Fed. 120; 36 U. S. App. 327] 17: 645  
 Insurer's option to take damaged property; sale of, by insured.  
     [59 Fed. 258; 16 U. S. App. 366] 8: 114  
 Agreement for submission, without waiver; admissibility of award.  
     [61 Fed. 752; 21 U. S. App. 228] 9: 623  
 Duty of insured, where first appraisal falls through without his fault.  
     [98 Fed. 381] 39: 383  
 Failure to submit to, a dilatory defense.  
     [67 Fed. 483; 32 U. S. App. 230] 14: 485  
 Specially pleading failure to arbitrate. Id.  
 Cross bill in action to restrain enforcement of appraiser's report.  
     [70 Fed. 429; 25 U. S. App. 443] 17: 175  
 Enjoining enforcement of fraudulent report of appraisers. Id.

**Cause of death or injury—In general.**

- In general, see Note, 38: 3  
 Statement of insured as to cause of injury as *res gestæ*.  
     [64 Fed. 689; 24 U. S. App. 364] 12: 392  
 Question for jury when dependent on oral testimony not wholly uncontradicted.  
     [92 Fed. 861; 63 U. S. App. 352] 35: 55  
 External, violent, and accidental means of injury, see Note, 38: 3  
 External and visible signs of injury, see Note, 38: 16  
 "Bodily injuries effected by external, violent, and accidental means;" what are.  
     [85 Fed. 401; 56 U. S. App. 393; 40 L. R. A. 653] 29: 223  
 Definition of "accidental means." Id.  
 Burden of proving that injury accidental.  
     [86 Fed. 282; 57 U. S. App. 446] 30: 48  
 Testimony of eyewitnesses that death not accidental not required.  
     [93 Fed. 158] 35: 250  
 Evidence held sufficient to sustain verdict of accidental death.  
     [84 Fed. 410; 55 U. S. App. 200] 28: 281  
 Burden of proof that accident sole cause of death.  
     [73 Fed. 774; 36 U. S. App. 658] 20: 3  
 Intentional injuries, see Note, 38: 8

**INSURANCE—continued.**

- Accident insurance; intentional injuries; murder.  
[86 Fed. 60; 52 U. S. App. 643] 29: 628
- "Death by accident;" insured purposely shot by another.  
[80 Fed. 368; 49 U. S. App. 9<sup>75</sup>] 25: 494
- Poison, *see* Note, 38: 13
- Poison taken accidentally under belief that harmless medicine.  
[89 Fed. 685; 60 U. S. App. 705] 32: 318
- Crossing track not within prohibition against "walking or being on . . . roadbed."  
[74 Fed. 457; 45 U. S. App. 39] 20: 588
- Risks of occupation or employment, *see* Note, 38: 9
- Injury while violating rule of employer; question as to insured's knowledge of rule for jury.  
[78 Fed. 754; 47 U. S. App. 260] 24: 305
- Employer must have enforced, or used reasonable effort to enforce, rule violated by insured. *Id.*
- Violation of law, *see* Note, 38: 14
- Whether death resulted from violation of law question for jury.  
[76 Fed. 705; 44 U. S. App. 694] 22: 499
- Injury while violating law; degree of proof.  
[59 Fed. 559; 19 U. S. App. 304] 8: 213
- Bodily infirmities or disease, *see* Note, 38: 11
- Death from bodily infirmities or disease; fainting from indigestion or lack of proper food. [58 Fed. 945; 16 U. S. App. 290; 22 L. R. A. 620] 7: 581
- Evidence held to show conclusively that death resulted from bodily infirmity or disease.  
[78 Fed. 285; 42 U. S. App. 253] 24: 92
- Intoxication, *see* Note, 38: 12
- Fighting or provoking assault, *see* Note, 38: 14
- Lifting or overexertion, *see* Note, 38: 11
- Risks of travel, conveyances, and presence on railroad tracks, *see* Note, 38: 10
- Inhaling gas, *see* Note, 38: 13
- Unconscious and involuntary inhaling of gas while asleep.  
[97 Fed. 17] 38: 29

**—Contributory negligence.**

- As a defense. [78 Fed. 754; 47 U. S. App. 260] 24: 305
- Instructions as to. [74 Fed. 457; 45 U. S. App. 39] 20: 588
- In crossing railroad track in front of train. *Id.*

**—Voluntary exposure to danger.**

- Voluntary exposure to unnecessary danger, *see* Note, 38: 5
- What constitutes voluntary exposure.  
[58 Fed. 945; 16 U. S. App. 290; 22 L. R. A. 620] 7: 581
- What voluntary exposure to unnecessary danger.  
[87 Fed. 682; 59 U. S. App. 479] 31: 193
- "Voluntary exposure to unnecessary danger;" scope of phrase.  
[78 Fed. 754; 47 U. S. App. 260] 24: 305
- "Voluntary exposure to avoidable danger" equivalent to "voluntary exposure to unnecessary danger."  
[78 Fed. 924; 47 U. S. App. 286] 24: 320
- "Voluntary and unnecessary exposure to danger" equivalent to "voluntary exposure to unnecessary danger." *Id.*
- Riding on platform of railroad car as voluntary exposure to unnecessary danger.  
[78 Fed. 754; 47 U. S. App. 260] 24: 305
- Evidence of customs; exposure to danger.  
[58 Fed. 342; 12 U. S. App. 704] 7: 264

**—Suicide.**

- Suicide as a defense to a life policy, *see* Notes, 16: 623; 28: 284
- What company subject to statute negating; assessment companies.  
[50 Fed. 511; 4 U. S. App. 353] 1: 561

**INSURANCE—continued.**

- Suicide considered, but not definitely determined on, when taking policy.  
[69 Fed. 932; 32 U. S. App. 753; 30 L. R. A. 87] 16: 618
- Evidence of intention to commit suicide when taking policy.  
[70 Fed. 954; 28 U. S. App. 612; 42 L. R. A. 583] 17: 537
- Recovery by personal representative of one committing suicide. Id.
- Admissibility of evidence of suicide without allegation.  
[73 Fed. 774; 36 U. S. App. 658] 20: 3
- Burden of proving that insured committed suicide. [94 Fed. 751] 36: 467  
[100 Fed. 582] 40: 564
- Presumption that the insured did not kill himself.  
[73 Fed. 444; 44 U. S. App. 492] 19: 519
- Letter written by insured day before death admissible to rebut evidence of intent to commit suicide. [92 Fed. 63; 63 U. S. App. 717] 34: 211
- Declarations by insured several years before death, as to committing suicide.  
[73 Fed. 444; 44 U. S. App. 492] 19: 519
- Judgment not directed for defendant where evidence reconcilable with death by accident, though tending to support defense of suicide.  
[100 Fed. 582] 40: 564
- Refusal of requested instruction on issue of murder or suicide.  
[84 Fed. 410; 55 U. S. App. 200] 28: 281
- Issue as to murder or suicide; court citing instances of accidental discharge of gun. Id.
- Shot wound causing great pain during which insured killed himself.  
[65 Fed. 178; 27 U. S. App. 547; 27 L. R. A. 629] 12: 544
- Averring insanity of insured committing suicide.  
[71 Fed. 843; 38 U. S. App. 37] 18: 332
- Necessity as to alleging insanity of insured committing suicide. Id.
- Evidence as to sanity of insured committing suicide. Id.
- What constitutes insanity of insured committing suicide.  
[70 Fed. 954; 28 U. S. App. 612; 42 L. R. A. 583] 17: 537
- Suicide while mental faculties impaired.  
[71 Fed. 843; 38 U. S. App. 37] 18: 332

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- Proximate cause of injury, see Note, 38: 15
- Application of doctrine of proximate cause.  
[65 Fed. 178; 27 U. S. App. 547; 27 L. R. A. 629] 12: 544
- Effects of accident aggravated by pre-existing disease.  
[73 Fed. 774; 36 U. S. App. 658] 20: 3
- Disease a mere link in chain of causation between accident and death.  
[85 Fed. 401; 56 U. S. App. 393; 40 L. R. A. 653] 29: 223
- In case of accident to person with diseased heart, question for jury.  
[93 Fed. 621] 35: 493
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[65 Fed. 178; 27 U. S. App. 547; 27 L. R. A. 629] 12: 544
- Drowning as proximate cause of death.  
[58 Fed. 945; 16 U. S. App. 290; 22 L. R. A. 620] 7: 581
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[85 Fed. 401; 56 U. S. App. 393; 40 L. R. A. 653] 29: 223
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[65 Fed. 178; 27 U. S. App. 547; 27 L. R. A. 629] 12: 544

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- Burden of showing that loss within exception.  
[83 Fed. 811; 51 U. S. App. 577; 40 L. R. A. 561] 28: 157
- Unnecessary allegation negating exception. Id.
- Refusal of instruction as to burden of showing certain facts proved without conflict. Id.
- Instruction as to cause of destruction of insured bridge.  
[65 Fed. 628; 25 U. S. App. 190] 13: 58
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[83 Fed. 811; 51 U. S. App. 577; 40 L. R. A. 561] 28: 157
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[88 Fed. 243; 60 U. S. App. 10] 31: 515
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[57 Fed. 294; 9 U. S. App. 186; 21 L. R. A. 572] 6: 336
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[89 Fed. 131; 59 U. S. App. 499] 32: 173
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- Effect of prorating clause on liability of insurers for breach of obligation to repair.  
[82 Fed. 546; 54 U. S. App. 215] 27: 223
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- Measure of damages for breach of insurer's obligation to repair. Id.
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**Interest in proceeds.**

- Interest of administrator in state where policy is.  
[67 Fed. 694; 29 U. S. App. 220] 14: 635
- Statements by widow, not constitute admissions, affecting right of administrator to recover on policy payable to estate.  
[98 Fed. 251] 39: 56
- Right to proceeds as between lessor and mortgage trustee.  
[76 Fed. 34; 46 U. S. App. 179] 22: 47
- Right to proceeds of insurance on machinery as between lessor and lessee. Id.
- Stipulation in lease for equitable lien for rent on machinery. Id.
- Right to insurance moneys as between lessor and lessee and latter's mortgagee.  
[77 Fed. 818; 46 U. S. App. 587] 23: 480
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[52 Fed. 180; 6 U. S. App. 283] 2: 657
- No recovery by estate of insured, where creditor to whom policy assigned paid all premiums.  
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- Where some policies cover other property.  
[74 Fed. 203; 36 U. S. App. 672; 33 L. R. A. 249] 20: 397
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- Defense; destroying insurer's right of subrogation against carrier.  
[55 Fed. 238; 14 U. S. App. 201] 5: 88
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[59 Fed. 984; 19 U. S. App. 460] 8: 433
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- Tender of unpaid premium before bringing action.  
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- Stipulation requiring actions to be brought only in circuit court; validity.  
[82 Fed. 508; 54 U. S. App. 290] 27: 212
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[71 Fed. 570; 39 U. S. App. 34] 18: 251
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- Action by beneficiary as administrator.  
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sured. [66 Fed. 460; 25 U. S. App. 214] 13: 579

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- Limitation of time for bringing action.  
[51 Fed. 715; 7 U. S. App. 325] 2: 463
- When limitation of time to commence action begins to run.  
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- Bringing second suit after time limit expires, where first suit dismissed for  
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**X. MARINE INSURANCE.****In general.**

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- Loss or damage by perils of the sea, etc., see Notes, 19: 465; 20: 357
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- Authority of local agent to make preliminary contracts. [54 Fed. 839; 6 U. S. App. 549] 4: 600
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- Words of average clause in English policy construed according to English law. [90 Fed. 301; 61 U. S. App. 214] 33: 63
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- Liability of agent of foreign revolutionary government for acts done in own state.  
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[58 Fed. 473; 8 U. S. App. 461] 7: 322

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[49 Fed. 583; 1 U. S. App. 101] 1: 387

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[48 Fed. 62; 4 U. S. App. 49] 1: 37

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[98 Fed. 657] 39: 211

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[92 Fed. 944] 35: 97

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[62 Fed. 694; 22 U. S. App. 522] 10: 591

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[53 Fed. 348; 5 U. S. App. 230] 3: 556

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[53 Fed. 854; 9 U. S. App. 406] 4: 55

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[68 Fed. 263; 31 U. S. App. 486] 15: 397

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[57 Fed. 980; 18 U. S. App. 349] 6: 661

[57 Fed. 992; 18 U. S. App. 371] 6: 673

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[62 Fed. 638; 23 U. S. App. 420] 10: 555

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[56 Fed. 762; 9 U. S. App. 578] 6: 111

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[57 Fed. 980; 18 U. S. App. 349] 6: 661

[57 Fed. 992; 18 U. S. App. 371] 6: 673

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[55 Fed. 600; 12 U. S. App. 320] 5: 249

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[58 Fed. 721; 18 U. S. App. 455] 7: 442

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[99 Fed. 707] 40: 76

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[98 Fed. 699] 39: 241

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[89 Fed. 648; 60 U. S. App. 675] 32: 284

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[55 Fed. 690; 12 U. S. App. 320] 5: 249

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Id.

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[95 Fed. 457] 37: 146

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[95 Fed. 344] 37: 96

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[79 Fed. 567; 49 U. S. App. 216] 25: 87

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[55 Fed. 690; 12 U. S. App. 320] 5: 249

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[89 Fed. 648; 60 U. S. App. 675] 32: 284

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[74 Fed. 864; 33 U. S. App. 522] 21: 152

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[84 Fed. 103; 53 U. S. App. 718] 28: 279

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[77 Fed. 677; 46 U. S. App. 561] 23: 394

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[60 Fed. 249; 23 U. S. App. 10] 8: 607

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[83 Fed. 738; 54 U. S. App. 532] 28: 66

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[53 Fed. 35; 3 U. S. App. 328] 3: 415

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[86 Fed. 585; 58 U. S. App. 444] 30: 293

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[72 Fed. 147; 39 U. S. App. 141] 18: 490

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[81 Fed. 269; 49 U. S. App. 453] 26: 397

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[98 Fed. 215] 39: 173

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[63 Fed. 330; 8 U. S. App. 661] 11: 229

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[84 Fed. 103; 53 U. S. App. 718] 28: 279

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[99 Fed. 598] 39: 669

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[55 Fed. 690; 12 U. S. App. 320] 5: 249

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[63 Fed. 891; 24 U. S. App. 38] 12: 350

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[74 Fed. 376; 42 U. S. App. 10] 20: 463

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[70 Fed. 166; 34 U. S. App. 293, 395] 17: 43

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[61 Fed. 557; 15 U. S. App. 456] 9: 613

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[97 Fed. 150] 38: 89

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[87 Fed. 536; 52 U. S. App. 663] 31: 107

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[64 Fed. 667; 29 U. S. App. 32] 12: 451

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[72 Fed. 496; 37 U. S. App. 664] 19: 136

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[53 Fed. 119; 9 U. S. App. 318] 3: 471

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[57 Fed. 980; 18 U. S. App. 349] 6: 661

[57 Fed. 992; 18 U. S. App. 371] 6: 673

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[76 Fed. 761; 46 U. S. App. 355] 22: 543

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[74 Fed. 864; 33 U. S. App. 522] 21: 152

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[57 Fed. 992; 18 U. S. App. 371] 6: 673

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[54 Fed. 820; 14 U. S. App. 21] 4: 597

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[90 Fed. 415; 61 U. S. App. 291] 33: 141

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[68 Fed. 24; 32 U. S. App. 348] 15: 189

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[79 Fed. 567; 49 U. S. App. 216] 25: 87

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[95 Fed. 747] 37: 240

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[51 Fed. 405; 4 U. S. App. 509] 2: 311

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[60 Fed. 332; 23 U. S. App. 168] 8: 645

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[91 Fed. 22; 61 U. S. App. 678] 33: 313

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[88 Fed. 59; 59 U. S. App. 87] 31: 389

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[97 Fed. 270] 38: 167

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[79 Fed. 567; 49 U. S. App. 216] 25: 87

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[97 Fed. 435] 38: 250

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[80 Fed. 686; 49 U. S. App. 376] 25: 469

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[71 Fed. 324; 37 U. S. App. 499] 18: 122

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[63 Fed. 867; 27 U. S. App. 436] 11: 470

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[87 Fed. 586; 59 U. S. App. 452] 31: 114

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[50 Fed. 737; 4 U. S. App. 406] 1: 642
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- On account stated, conclusive of fairness of account.  
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[52 Fed. 1; 2 U. S. App. 254] 2: 587
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[60 Fed. 824; 22 U. S. App. 83] 9: 273
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[61 Fed. 874; 27 U. S. App. 49] 10: 135
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[49 Fed. 583; 1 U. S. App. 101] 1: 387
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[93 Fed. 636] 35: 508
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[90 Fed. 72; 59 U. S. App. 457] 32: 522
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[68 Fed. 155; 31 U. S. App. 731] 15: 335
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[76 Fed. 699; 42 U. S. App. 133] 22: 493
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[49 Fed. 583; 1 U. S. App. 101] 1: 387
- Dismissal of libel of owner of vessel, owner of cargo. Id.
- Private party bringing suit in name of government to enforce own rights.  
[84 Fed. 40; 55 U. S. App. 246] 28: 267

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Heirs by judgment against administrator. [91 Fed. 483; 63 U. S. App. 371] 33: 648

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Judgment on policy, prima facie evidence, if not collusive against surety in indemnity bond. [79 Fed. 420; 49 U. S. App. 148] 24: 650

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[67 Fed. 84; 31 U. S. App. 387] 14: 314
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[100 Fed. 515] 40: 525
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[93 Fed. 349] 35: 335
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- Holders of receiver's certificates, decree establishing prior lien.  
[62 Fed. 686; 23 U. S. App. 660] 10: 587
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[79 Fed. 189; 48 U. S. App. 235] 24: 476
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[98 Fed. 489] 39: 126
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[76 Fed. 166; 46 U. S. App. 281; 36 L. R. A. 139] 22: 110
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- Judgment against county, status of holder of coupons cut from bonds issued in satisfaction of.  
[79 Fed. 567; 49 U. S. App. 216] 25: 87
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- Review of judgment for one joint defendant barred by judgment for other becoming final.  
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[76 Fed. 10; 46 U. S. App. 486] 22: 11

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[91 Fed. 511; 63 U. S. App. 37] 33: 658

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[60 Fed. 249; 23 U. S. App. 10] 8: 607

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[79 Fed. 227; 48 U. S. App. 324] 24: 511

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[79 Fed. 748; 48 U. S. App. 326] 25: 194

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[70 Fed. 442; 25 U. S. App. 415; 30 L. R. A. 823] 17: 181

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[68 Fed. 758; 25 U. S. App. 257] 15: 651

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[79 Fed. 471; 49 U. S. App. 191] 25: 39

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[85 Fed. 75; 56 U. S. App. 122] 29: 35

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[88 Fed. 588; 59 U. S. App. 403] 32: 46

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[99 Fed. 822] 40: 105

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[70 Fed. 442; 25 U. S. App. 415; 30 L. R. A. 823] 17: 181

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[80 Fed. 441; 42 U. S. App. 417] 25: 540

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[86 Fed. 711; 52 U. S. App. 675] 30: 349

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[55 Fed. 885; 12 U. S. App. 242] 5: 293

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[99 Fed. 650] 40: 27

Promise to pay debt out of proceeds of judgment, and to assign in payment of same, not equitable assignment.  
Id.

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Setting aside, for indebtedness to one of the two judgment debtors.  
[70 Fed. 38; 32 U. S. App. 762] 16: 616

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[68 Fed. 263; 31 U. S. App. 486] 15: 397

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[83 Fed. 975; 53 U. S. App. 669] 28: 242

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[84 Fed. 939; 56 U. S. App. 231] 28: 576

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[92 Fed. 313] 34: 360

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Id.

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Id.

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Id.

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[51 Fed. 97; 4 U. S. App. 416] 2: 110

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[92 Fed. 313] 34: 360

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[88 Fed. 435; 60 U. S. App. 100] 31: 570

**Credit given to judgments of other courts—In general.**

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Conclusiveness as between Federal and state courts, see Note, 21: 478

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[76 Fed. 429; 47 U. S. App. 1] 21: 468

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[71 Fed. 167; 35 U. S. App. 750] 18: 24

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[68 Fed. 24; 32 U. S. App. 348] 15: 189

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[56 Fed. 12; 12 U. S. App. 305] 5: 403

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**—Collateral attack in Federal court.**

On judgment of state court.

[91 Fed. 60; 50 U. S. App. 484; 43 L. R. A. 618] 33: 328

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[59 Fed. 970; 16 U. S. App. 704] 8: 419

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[85 Fed. 492; 56 U. S. App. 510] 29: 295

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[63 Fed. 305; 27 U. S. App. 329] 11: 465

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Test of jurisdiction.

[79 Fed. 567; 49 U. S. App. 216] 25: 87

[79 Fed. 598; 49 U. S. App. 201] 25: 116

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[58 Fed. 536; 19 U. S. App. 118] 7: 354

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[67 Fed. 684; 31 U. S. App. 626] 14: 625

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[53 Fed. 697; 2 U. S. App. 449] 3: 621

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[79 Fed. 598; 49 U. S. App. 201] 25: 116

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[71 Fed. 455; 34 U. S. App. 533] 18: 188

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[94 Fed. 375] 36: 301

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[78 Fed. 850; 52 U. S. App. 19] 24: 369

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[68 Fed. 263; 31 U. S. App. 486] 15: 397

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[78 Fed. 399; 45 U. S. App. 409] 24: 145

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[88 Fed. 140; 59 U. S. App. 330] 31: 427

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[91 Fed. 483; 63 U. S. App. 371] 33: 648

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[85 Fed. 703; 56 U. S. App. 683] 29: 394

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[71 Fed. 151; 36 U. S. App. 266] 18: 15

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[76 Fed. 1005; 33 U. S. App. 628] 21: 598

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[51 Fed. 614; 10 U. S. App. 267] 2: 402

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[74 Fed. 601; 41 U. S. App. 381] 20: 548

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[51 Fed. 614; 10 U. S. App. 267] 2: 402

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[76 Fed. 1005; 33 U. S. App. 628] 21: 598

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[79 Fed. 567; 49 U. S. App. 216] 25: 87

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[76 Fed. 429; 47 U. S. App. 1] 21: 468

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[70 Fed. 341; 44 U. S. App. 43] 17: 138

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[68 Fed. 43; 29 U. S. App. 651; 33 L. R. A. 759] 15: 201

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- In equity, on ground of attempted but unsuccessful fraud.  
     [97 Fed. 525] 38: 336  
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     [67 Fed. 384; 32 U. S. App. 126] 14: 440  
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     [92 Fed. 244] 34: 321  
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     [85 Fed. 246; 42 U. S. App. 742] 29: 137  
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     [57 Fed. 531; 18 U. S. App. 288] 6: 471  
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     [56 Fed. 694; 13 U. S. App. 308] 6: 83  
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     [59 Fed. 742; 19 U. S. App. 442] 8: 241  
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     [85 Fed. 508; 55 U. S. App. 715] 29: 303  
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     [57 Fed. 531; 18 U. S. App. 288] 6: 471  
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     [76 Fed. 479; 42 U. S. App. 123] 22: 283  
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     [85 Fed. 246; 42 U. S. App. 742] 29: 137

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[76 Fed. 257; 46 U. S. App. 268] 22: 156
- From default judgment recovered by false statement as to essential fact.  
[79 Fed. 522; 47 U. S. App. 470] 25: 50
- Jurisdiction of suit to annul judgment because procured by perjured testimony.  
[90 Fed. 778; 62 U. S. App. 311] 33: 272
- Receiver's possession of property no ground for enjoining enforcement.  
[73 Fed. 562; 43 U. S. App. 214] 19: 563
- Jurisdiction in, to impeach collusive decree impairing value of corporate bonds.  
[94 Fed. 375] 36: 301
- Enjoining enforcement of default judgment.  
[74 Fed. 23; 46 U. S. App. 103] 20: 274
- Enjoining decree quieting title.  
[59 Fed. 836; 19 U. S. App. 407] 8: 305
- Judgment in ejectment based on fraudulent conveyance.  
[49 Fed. 506; 4 U. S. App. 274] 1: 339
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[70 Fed. 894; 18 U. S. App. 723; 34 U. S. App. 316] 17: 479
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[76 Fed. 678; 40 U. S. App. 567] 22: 477
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[81 Fed. 902; 53 U. S. App. 399] 26: 673
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[59 Fed. 742; 19 U. S. App. 442] 8: 241
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Id.
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[62 Fed. 110; 19 U. S. App. 657] 10: 294
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Id.

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- Of orally expressed opinion or finding of judge before it becomes written order of court.  
[98 Fed. 540] 39: 156

**—After term.**

- Of proof of service after term.  
[51 Fed. 614; 10 U. S. App. 267] 2: 402
- Of proof of publication in attachment after term.  
Id.
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[70 Fed. 656; 37 U. S. App. 447] 17: 317
- Of decree not fully carrying out mandate of court above.  
[64 Fed. 499; 29 U. S. App. 71] 12: 239
- Correcting, to make conformable to facts.  
[70 Fed. 656; 37 U. S. App. 447] 17: 317
- To state that one appearing to be attorney in fact was attorney at law appearing as attorney in fact.  
Id.
- Where necessity of and matter authorizing appear from record.  
Id.
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Id.
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- Right to modify after term, decree confirming master's report in foreclosure.  
     [70 Fed. 643; 30 U. S. App. 504] 17: 310
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**JUDICIAL NOTICE.**

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**JUDICIAL SALES.**

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     [59 Fed. 19; 18 U. S. App. 380] 7: 603

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     [54 Fed. 221; 12 U. S. App. 125] 4: 296

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     [59 Fed. 1; 16 U. S. App. 325] 7: 598

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     [100 Fed. 344] 40: 394

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     [51 Fed. 614; 10 U. S. App. 267] 2: 402

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     [51 Fed. 614; 10 U. S. App. 267] 2: 402

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     [58 Fed. 473; 8 U. S. App. 461] 7: 222

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     [52 Fed. 74; 2 U. S. App. 403] 2: 626

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     [92 Fed. 49; 63 U. S. App. 678] 34: 197

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     [66 Fed. 856; 30 U. S. App. 133] 14: 148

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     [75 Fed. 415; 41 U. S. App. 191] 21: 417

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[65 Fed. 215; 24 U. S. App. 542] 12: 578

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[78 Fed. 563; 40 U. S. App. 748] 23: 551

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[92 Fed. 252] 34: 323

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[54 Fed. 63; 7 U. S. App. 481] 4: 189

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Estoppel to claim right to redeem by delay and permitting improvements made.  
[65 Fed. 882; 27 U. S. App. 631] 13: 186

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In Admiralty, see ADMIRALTY.

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- In criminal case, see Note, 39: 281  
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     [87 Fed. 258; 59 U. S. App. 1] 31: 282  
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     [53 Fed. 172; 5 U. S. App. 224] 3: 494  
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     [53 Fed. 758; 5 U. S. App. 240] 3: 644  
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     [69 Fed. 987; 34 U. S. App. 177] 16: 575  
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- How and when objections to mode of, taken.  
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     [48 Fed. 148; 4 U. S. App. 10] 1: 53  
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- Grounds of challenge in Federal court, following practice of state court.  
     [50 Fed. 737; 4 U. S. App. 406] 1: 642  
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     [49 Fed. 696; 7 U. S. App. 84] 1: 416  
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     torney. [93 Fed. 396] 35: 369  
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[55 Fed. 932; 17 U. S. App. 22] 5: 326

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[70 Fed. 113; 34 U. S. App. 261; 30 L. R. A. 336] 17: 1

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[88 Fed. 613; 60 U. S. App. 235] 30: 257

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[83 Fed. 619; 54 U. S. App. 416] 27: 634

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[73 Fed. 1006; 43 U. S. App. 265] 20: 33

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Id.

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[76 Fed. 408; 47 U. S. App. 19; 34 L. R. A. 550] 22: 248

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[90 Fed. 178; 61 U. S. App. 576] 32: 560

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[76 Fed. 34; 46 U. S. App. 179] 22: 47

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[95 Fed. 336] 37: 88

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[83 Fed. 95; 55 U. S. App. 59] 27: 462

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Id.

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[76 Fed. 408; 47 U. S. App. 19; 34 L. R. A. 550] 22: 248

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[82 Fed. 857; 53 U. S. App. 542; 39 L. R. A. 711] 27: 147

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[64 Fed. 679; 28 U. S. App. 134; 27 L. R. A. 131] 12: 384

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- Covenant not to assign without lessor's consent, title of assignee.  
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     [59 Fed. 83; 16 U. S. App. 311] 8: 14  
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**LIBEL AND SLANDER.**

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     [63 Fed. 873; 25 U. S. App. 99] 11: 476  
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- Presumption in favor of man of good reputation whose reputation attacked.  
[94 Fed. 762] 36: 475
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[59 Fed. 530; 16 U. S. App. 613] 8: 201
- Evidence of previous publication by third persons of same libelous matter, inadmissible.  
[98 Fed. 925] 40: 163
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- Articles printed in newspaper printed in other state, admissible. Id.
- Evidence of similar publications in other papers.  
[72 Fed. 443; 34 U. S. App. 607] 18: 628
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[55 Fed. 240; 14 U. S. App. 173] 5: 91
- Evidence of recovery of judgment against other paper for same libel.  
[78 Fed. 769; 45 U. S. App. 636] 24: 329
- Refusal of instruction that no proof of publication at plaintiff's home.  
[55 Fed. 240; 14 U. S. App. 173] 5: 91
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[78 Fed. 460; 46 U. S. App. 673] 24: 169
- Request, general conduct of press, publication by corporation or individual, abstract.  
[55 Fed. 240; 14 U. S. App. 173] 5: 91
- Stating that jury would likely consider publication as an atrocious libel.  
[78 Fed. 769; 45 U. S. App. 636] 24: 329
- Person writing libelous letter responsible for subsequent publication naturally resulting.  
[98 Fed. 222] 39: 19
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[72 Fed. 136; 30 U. S. App. 730] 18: 481

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- Uttering to editor of paper printing. [63 Fed. 873; 25 U. S. App. 99] 11: 476

**What actionable—In general.**

- That former manager of corporation located, living in luxury in Canada.  
[63 Fed. 238; 26 U. S. App. 167; 26 L. R. A. 531] 11: 155
- Publication by mercantile agency, that member of a firm had conveyed real estate.  
[82 Fed. 169; 52 U. S. App. 381] 27: 100
- Stating that certain person cannot get "down any lower."  
[64 Fed. 696; 24 U. S. App. 376] 12: 399
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[59 Fed. 980; 15 U. S. App. 353] 8: 429
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[98 Fed. 222] 39: 19
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- Burden of proof as to malice respecting communications qualifiedly privileged.  
[78 Fed. 460; 46 U. S. App. 673] 24: 169
- Matter in pleading held libelous, and not privileged.  
[83 Fed. 803; 48 U. S. App. 575] 28: 96
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[72 Fed. 808; 44 U. S. App. 427] 19: 202
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[78 Fed. 460; 46 U. S. App. 673] 24: 169
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[59 Fed. 530; 16 U. S. App. 613] 8: 201
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**Slander of title.**

Disproving tax title, prior payment of taxes, not pleaded.

[57 Fed. 333; 13 U. S. App. 399] 6: 358

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Id.

**Damages—In general.**

Aggravating by interposing, in bad faith, defenses not proved.

[98 Fed. 925] 40: 163

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Id.

Mental suffering as an element of, see

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[94 Fed. 762] 36: 475

Compensatory damages for unprivileged publication of libel without allegation of malice.

Id.

Plaintiff's general social standing considered on question of.

[63 Fed. 238; 26 U. S. App. 167; 26 L. R. A. 531] 11: 155

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[55 Fed. 240; 14 U. S. App. 173] 5: 91

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[72 Fed. 443; 34 U. S. App. 607] 18: 628

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[84 Fed. 758; 51 U. S. App. 689] 28: 522

Instruction that amount of, cannot be reached by arithmetical calculation.

[55 Fed. 240; 14 U. S. App. 173] 5: 91

Instruction that article read only by intimate friends.

Id.

Instruction as to effect of extent of circulation.

[72 Fed. 443; 34 U. S. App. 607] 18: 628

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[98 Fed. 222] 39: 19

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[82 Fed. 169; 52 U. S. App. 381] 27: 100

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[78 Fed. 769; 45 U. S. App. 636] 24: 329

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[94 Fed. 762] 36: 475

When allowed, reliance on report of news agency.

[55 Fed. 240; 14 U. S. App. 173] 5: 91

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[51 Fed. 513; 1 U. S. App. 206; 16 L. R. A. 803] 2: 354

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[63 Fed. 238; 26 U. S. App. 167; 26 L. R. A. 531] 11: 155

Where publication made with reckless disregard of libeled person's rights.

[94 Fed. 762] 36: 475

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Id.

Whether rule of paper shows wanton disregard of others' rights authorizing question for jury.

[78 Fed. 769; 45 U. S. App. 636] 24: 329

Corporation liable for, for circulating libel in newspaper.

[94 Fed. 762] 36: 475

**Malice.**

Unsustained plea that publication substantially true, evidence of actual malice.

[98 Fed. 925] 40: 163

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[83 Fed. 803; 48 U. S. App. 575] 28: 96

**LIBEL AND SLANDER—continued.**

- Burden of proof as to, respecting communications qualifiedly privileged.  
[78 Fed. 460; 46 U. S. App. 673] 24: 169
- Stating conversation, referring to information, denying malice. Id.
- Evidence of nonpublication of bringing suit on question of.  
[59 Fed. 530; 16 U. S. App. 613] 8: 201
- Evidence of prior or contemporaneous publication on question of, though separate suit pending. Id.
- Statement showing reckless indifference, sensationalism, admissible on cross-examination. Id.
- Conclusively implied from publication of libel. [94 Fed. 762] 36: 475
- Instruction that the law implies. [55 Fed. 240; 14 U. S. App. 173] 5: 91
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**Mitigation.**

- Evidence of other offenses as defense, see Note, 40: 168
- That person libeled guilty of other offenses of similar character.  
[98 Fed. 925] 40: 163
- Publication by and liability of others, see Note, 40: 169
- Only facts known to person publishing libel at time of publication available.  
[98 Fed. 925] 40: 163
- That person charged with indictment with his partner for forgery was guilty of forgery and his partner indicted. Id.
- So-called defense in mitigation of damages containing no matter tending to show that defendant acted in good faith in making publication. Id.
- Necessity of pleading matter in mitigation of damages. [94 Fed. 762] 36: 475
- Evidence as to author of libel, excluding news agency, mitigation.  
[55 Fed. 240; 14 U. S. App. 173] 5: 91
- Belief of city editor in thoroughness of investigation properly stricken out where malice not in issue. [78 Fed. 769; 45 U. S. App. 636] 24: 329
- Evidence that investigation would have shown falsity of despatch published.  
[73 Fed. 440; 38 U. S. App. 557] 19: 516

**Justification.**

- That information from which publication made derived from another.  
[94 Fed. 762] 36: 475

**LIBRARY.**

- Bequest for establishment of, not void for indefiniteness.  
[92 Fed. 806; 63 U. S. App. 149] 34: 676

**LICENSES.**

- To Use Patented Invention, see PATENTS.
- To Use Railroad Track, see RAILROADS.
- On Train, see CARRIERS.
- Rights, after dissolution of partnership, to manufacture article.  
[50 Fed. 531; 8 U. S. App. 69] 1: 570
- Deed of right to enter land for mining purposes, not. [93 Fed. 1] 35: 177
- Termination by notice. [61 Fed. 731; 22 U. S. App. 313] 10: 28
- From corporation, effect of receiver's appointment. Id.

**For right to do business.**

- On telegraph poles and wires. [89 Fed. 454; 60 U. S. App. 398] 32: 246
- Reasonableness of, against telegraph company, question for jury. Id.
- On express companies engaged in interstate commerce.  
[68 Fed. 183; 25 U. S. App. 379] 15: 360

**LIENS.**

- Particular Classes of Liens, see also MARITIME LIENS; MECHANICS' LIENS; PLEDGES.

Of Attorney, see ATTORNEY AND CLIENT.



## LIENS—continued.

- Of Broker, see BROKERS.
- Of Mortgages, see CHATTEL MORTGAGES; MORTGAGES.
- Of Attachment, see ATTACHMENT.
- Of Judgment, see JUDGMENT.
- For Rent, see LANDLORD AND TENANT.
- Of Receivers' Certificates, see RECEIVERS.
- For Taxes, see TAXATION.
- Of Seller of Goods, see SALES.
- Of Vendor of Real Property, see VENDOR AND PURCHASER.
- Of Corporation on Stock, see CORPORATIONS.
- Jurisdiction and Enforcement of Maritime Liens, see ADMIRALTY.
- Abandoning mortgage lien and charging debt as specific lien on other property. [89 Fed. 213; 60 U. S. App. 602] 32: 193
- Of agent, right to. [54 Fed. 450; 12 U. S. App. 183] 4: 433
- On money in court, right to interest on. [85 Fed. 103; 56 U. S. App. 149] 29: 41
- On bonds loaned to firm in favor of prospective creditor. [63 Fed. 204; 27 U. S. App. 291] 11: 135
- On lands of persons procuring act under which bonds subsequently declared void, issued. [95 Fed. 883] 37: 309
- Of railroad-aid bonds on entire land purchased with proceeds. [66 Fed. 224; 23 U. S. App. 549] 13: 410
- Of mining partner for past profits. [95 Fed. 35] 35: 510  
See also Note, 35: 520
- In favor of fraudulent grantee's partner on setting aside conveyance. [89 Fed. 885; 61 U. S. App. 562] 32: 384
- For wharfrage. [71 Fed. 987; 38 U. S. App. 197] 18: 404
- For destruction of private right of way by constructing railroad over. [90 Fed. 593; 61 U. S. App. 714] 33: 189
- Of city against street-railway company for paving street. [66 Fed. 689; 30 U. S. App. 762] 14: 59
- Making preferred railroad stock lien on property as well as net earnings. [95 Fed. 497] 36: 155
- For wages of labor not dissolved by bankruptcy proceedings against employer. [95 Fed. 116] 36: 677
- Joint intervention to enforce labor liens against property sequestered in action at law on contract. [100 Fed. 1] 40: 240
- For advances in joint venture, right to interpose as defense. [76 Fed. 25; 40 U. S. App. 302] 22: 25
- For advances to complete purchase of railroad on foreclosure. [68 Fed. 24; 32 U. S. App. 348] 15: 189
- Power of railroad company to create, on its property. [66 Fed. 809; 31 U. S. App. 432] 14: 116
- On bonds issued by company purchasing railroad property on foreclosure not created by creditor's bill. [66 Fed. 663; 24 U. S. App. 641] 14: 36
- To city, on land purchased with city warrants fraudulently issued. [63 Fed. 883; 27 U. S. App. 469] 11: 479
- Existence of, on land, defense to action for purchase money. [69 Fed. 451; 37 U. S. App. 365] 16: 296
- By owner of property misapplied by trustee on latter's assets. [68 Fed. 979; 29 U. S. App. 707] 16: 81
- For freight, action to enforce before due. [65 Fed. 236; 24 U. S. App. 500] 12: 628
- Right to complain where prior liens exceed amount of proceeds. [66 Fed. 663; 24 U. S. App. 641] 14: 36
- On railroad, discharged by purchaser on foreclosure depositing funds to pay, though funds lost. [95 Fed. 560] 37: 165

**LIENS—continued.**

- Sharing *pro rata* in other property resorted to, to pay deficiency.  
[91 Fed. 22; 61 U. S. App. 678] 33: 313
- Proceeds of sale under agreement between certain lienholders; right of lienholder not party to agreement. [76 Fed. 688; 40 U. S. App. 404] 22: 488
- Of sewer contractor, on fund from sale of bonds.  
[74 Fed. 668; 41 U. S. App. 400] 20: 667
- Equitable, on property of Shakers to secure obligation on their behalf.  
[68 Fed. 730; 37 U. S. App. 141] 15: 632
- Enforcement of equitable lien on personalty.  
[58 Fed. 490; 19 U. S. App. 144] 7: 335
- Foreclosure of equitable lien on personalty, jurisdiction. Id.
- Equitable, of bank, on proceeds of sale of stock purchased with money borrowed from it.  
[84 Fed. 270; 55 U. S. App. 515] 28: 329

**Priorities.**

- Not affected by appointment of receiver.  
[90 Fed. 454; 62 U. S. App. 195] 33: 598
- Preference to one of several lienors of equal ranks.  
[68 Fed. 263; 31 U. S. App. 486] 15: 397
- On personalty, for taxes prior to lien of private parties.  
[94 Fed. 244] 36: 214
- Between mortgagee and subsequent lienor to mortgagor's other property.  
[68 Fed. 263; 31 U. S. App. 486] 15: 397
- Between mortgages and liens for money advanced to bridge company to build approaches.  
[90 Fed. 322; 62 U. S. App. 112] 33: 69
- Between mortgage and mining partner's lien on product of mine.  
[95 Fed. 35] 35: 510
- Preferential, on railroad lessor's property, for rails sold to individual for lessee.  
[91 Fed. 5; 62 U. S. App. 1] 33: 299
- Between railroad mortgage and lien for destroying private right of way by constructing road over.  
[90 Fed. 593; 61 U. S. App. 714] 33: 189
- Perfected to unperfected liens for labor in bankruptcy proceedings.  
[95 Fed. 116] 36: 677
- Provision as to lien in decree foreclosing railroad mortgage, effect on priority.  
[68 Fed. 263; 31 U. S. App. 486] 15: 397
- Interest allowed on superior lien from maturity.  
[68 Fed. 105; 31 U. S. App. 704; 34 L. R. A. 625] 15: 289
- Interest allowed on superior lien to time of satisfaction.  
[67 Fed. 84; 31 U. S. App. 387] 14: 314

**LIFE ESTATES.**

- Will construed to create only a life estate.  
[80 Fed. 485; 39 U. S. App. 605] 25: 581

**LIFE INSURANCE.**

See **INSURANCE.**

**LIFE TENANTS.**

- Conclusiveness of Judgment on Remaindermen, see **JUDGMENT.**
- Right to corporate stock issued for property.  
[60 Fed. 645; 18 U. S. App. 542] 9: 174
- Lien for taxes on remainderman's interest extinguished by purchaser's foreclosure against life tenant only.  
[96 Fed. 657] 37: 552

**LIGHTERAGE.**

- Securing cargo on stranded ship from risk to which exposed, salvage, not lighterage.  
[86 Fed. 340; 57 U. S. App. 688] 30: 70

**LIGHTHOUSE.**

- Judicial notice of regulations of lighthouse board not taken in admiralty.  
[97 Fed. 974] 38: 617

**LIGHT MONEY.**

When foreign-built, unregistered vessel exempt from payment of.

[51 Fed. 523; 1 U. S. App. 228] 2: 362

**LIMITATION.**

Of Claim of Patent, see **PATENTS**.

Of Power to Incur Indebtedness, see **COUNTIES**; **MUNICIPAL CORPORATIONS**.

**LIMITATION OF ACTIONS.**

See also **ADVERSE POSSESSION**.

Laches, see **EQUITY**.

When Action on Insurance Barred, see **INSURANCE**.

Conflict of Laws as to, see **CONFLICT OF LAWS**.

Federal Court Following State Statute, see **COURTS**.

Contract Limiting Time to Bring Action against Carrier, see **CARRIERS**; **SHIPPING**.

Time of Finding or Bringing Action to Enforce Lien, see **MECHANICS' LIENS**.

Court can make no exceptions where statute makes none.

[92 Fed. 868] 35: 62

Right to bar, a personal privilege, stockholder, corporation.

[55 Fed. 366; 13 U. S. App. 57] 5: 134

Debt barred, right to transfer of stock pledged as collateral security. Id.

In Indian territory before Arkansas statute extended.

[49 Fed. 440; 4 U. S. App. 283] 1: 311

Statute creating new right of action and fixing brief time within which to bring suit.

[65 Fed. 188; 27 U. S. App. 528] 12: 566

Retrospective operation of act limiting time to revive judgment.

[38 Fed. 435; 60 U. S. App. 100] 31: 570

**To what claims applicable.**

Bill to remove cloud from title.

[58 Fed. 297; 19 U. S. App. 1] 7: 237

Action by assignee in bankruptcy to secure fund withheld by bankrupt.

[55 Fed. 961; 8 U. S. App. 414] 5: 356

Against counties for personal injuries from defective highways and bridges.

[65 Fed. 188; 27 U. S. App. 528] 12: 566

As affecting right to mandamus against municipal corporation to compel payment of judgment, see

Note, 25: 478

**To and against whom available.**

Not available to city against holders of warrants payable from judgments allowed by city to outlaw.

[87 Fed. 829; 59 U. S. App. 131] 31: 238

Not available to city in suit to require it to account for taxes.

[91 Fed. 574; 63 U. S. App. 455] 34: 15

United States not bound by.

[90 Fed. 182; 61 U. S. App. 548] 32: 564

**What statute applicable.**

Limitation for contesting will, not applicable to suit to establish trust in property included in will.

[72 Fed. 382; 37 U. S. App. 575] 18: 600

Actions to enforce deed of trust given as security.

[80 Fed. 564; 42 U. S. App. 508] 25: 644

Debt evidenced by contemporaneous memoranda made by each party to and explaining deed of trust. Id.

Legal fraud, refusal to convey title to real owner.

[49 Fed. 315; 4 U. S. App. 160] 1: 256

Delay in discovering fraud, matters of public record. Id.

What actions are for relief on ground of fraud, election between actions *ex contractu* and *ex delicto*.

[84 Fed. 131; 55 U. S. App. 205] 28: 305

Against collusive purchaser from devisee bound to provide for other children.

[53 Fed. 872; 10 U. S. App. 574] 4: 73

## LIMITATION OF ACTIONS—continued.

- Suit to remove cloud founded on judgment without jurisdiction.  
[58 Fed. 536; 19 U. S. App. 118] 7: 354
- Limitation for writ of error not applicable. Id.
- On foreclosure of mortgage securing notes under seal described as promissory notes.  
[74 Fed. 678; 40 U. S. App. 86] 20: 670
- Action to invalidate tax title, land owner whose possession not interrupted.  
[57 Fed. 333; 13 U. S. App. 399] 6: 358
- Implied contract, action for money had and received begun by holder of unconstitutional bonds.  
[52 Fed. 350; 10 U. S. App. 333] 3: 109
- In suits for infringement of patents, copyrights, and trademarks, see  
Notes, 22: 218; 36: 614
- Action against directors of national bank for making excessive loans.  
[86 Fed. 7; 57 U. S. App. 576] 29: 529
- Or for other acts either of misfeasance or nonfeasance. Id.
- Action on agreement to repair damage to leased cars.  
[56 Fed. 705; 13 U. S. App. 385] 6: 90
- Such action not one for arrearage of rent. Id.
- Nor one for breach of commutative contracts. Id.
- To claim against United States. [84 Fed. 933; 56 U. S. App. 262] 28: 570

**When statute runs—In general.**

- Under provision for bringing suit within specified time of "damage occurring."  
[65 Fed. 188; 27 U. S. App. 528] 12: 566
- In favor of remainderman. [54 Fed. 860; 2 U. S. App. 555] 4: 622
- On cause of action for libel. [72 Fed. 136; 30 U. S. App. 730] 18: 481
- Against items in accounts stated. [72 Fed. 758; 44 U. S. App. 376] 19: 176
- On notes of one member of syndicate against another, for price of land sold to syndicate.  
[94 Fed. 468] 36: 330
- On stay bond. [54 Fed. 269; 12 U. S. App. 11] 4: 320
- Against suit on cost bond, when judgment for costs rendered against principal.  
[88 Fed. 573; 60 U. S. App. 133] 32: 8
- On cancelation of sale. [59 Fed. 83; 16 U. S. App. 311] 8: 14
- When tax deed insufficient to start statute.  
[56 Fed. 564; 15 U. S. App. 118] 6: 18
- To set aside tax deed, failure to recite notice. Id.
- For breach of warranty of title from eviction only.  
[86 Fed. 251; 56 U. S. App. 579] 30: 17
- For breach of warranty, by railroad company, of land not included in grant, from time government asserts title. Id.
- Running of statute to recover back purchase money on failure of title to land.  
[64 Fed. 80; 27 U. S. App. 421] 12: 48
- While legal title to land remains in United States.  
[80 Fed. 458; 53 U. S. App. 4] 25: 557
- Against grantor on grantee's manifestation of intention not to perform condition subsequent.  
[98 Fed. 281] 39: 86
- Against action to set aside fraudulent conveyance.  
[74 Fed. 435; 41 U. S. App. 172] 20: 496  
[75 Fed. 136; 41 U. S. App. 172] 21: 264
- Effect on, of third person's concealment of fraud.  
[71 Fed. 60; 36 U. S. App. 361] 17: 592
- In case of fraud, knowledge of facts putting person of ordinary prudence upon inquiry.  
[79 Fed. 709; 49 U. S. App. 181] 25: 154
- When action to enforce express trust subject to. Id.
- Against national bank directors, for breach of implied trust in bank property.  
[94 Fed. 582] 36: 402

## LIMITATION OF ACTIONS—continued.

Against bank directors, for fraudulent diversion of funds, when diversion complete. Id.

Against receiver's right to recover back dividends from bank stockholders. [71 Fed. 60; 36 U. S. App. 361] 17: 592

To recover money paid on stock assessments, when begins to run. [93 Fed. 629] 35: 501

Separate calls on subscriptions to corporate stock. [51 Fed. 404; 4 U. S. App. 500] 2: 309

Against estate of decedent on unpaid subscription to stock of corporation. [51 Fed. 405; 4 U. S. App. 509] 2: 311

Death of stockholder not set statute running against action to enforce liability. [97 Fed. 297] 38: 193

On subscription to capital stock, call, assignment. [51 Fed. 400; 4 U. S. App. 478] 2: 305

To recover money paid for town bonds. [72 Fed. 462; 34 U. S. App. 615] 18: 636

Action to recover duties paid; failure to notify importer of adverse decision. [51 Fed. 868; 6 U. S. App. 128] 2: 526

To recover duties paid; decision by secretary or assistant secretary. Id.

For neglect of mortgage trustee to record mortgage, permitting a second mortgage to obtain priority. [79 Fed. 848; 51 U. S. App. 194] 25: 208

Indemnity for amount paid for damages by ship caused by negligence of third person. [52 Fed. 705; 10 U. S. App. 289] 3: 253

Against carrier, for unjust discrimination in freight charges alleged to have been fraudulently concealed. [92 Fed. 868] 35: 62

When mandamus proceeding to enforce judgment against town pending. [51 Fed. 97; 4 U. S. App. 416] 2: 110

Township officers failing to qualify, to prevent enforcement of judgment. Id.

Against government, necessity of presenting claim to executive department. [80 Fed. 848; 39 U. S. App. 630] 26: 184

In favor of new county, to enforce liability for indebtedness of old county. [90 Fed. 63; 61 U. S. App. 242] 32: 512

In favor of county against obligation payable from particular fund, after such fund provided. Id.

— **Coverture and other disabilities.**

Wife's right to bring action for personal injuries at any time during coverture. [70 Fed. 664; 37 U. S. App. 462] 17: 325

Wife's right to sue notwithstanding statute preventing running of limitation against. Id.

Removal of disability of married woman by statute. [53 Fed. 872; 10 U. S. App. 574] 4: 73

Adding absent heir's to absent ancestor's. [68 Fed. 446; 37 U. S. App. 129] 15: 510

Physical and mental incompetency. [53 Fed. 415; 10 U. S. App. 519] 3: 578

Statute allowing additional time after removal of, when applicable. [70 Fed. 529; 37 U. S. App. 1] 17: 251

**When action barred.**

Action on county warrants. [68 Fed. 787; 32 U. S. App. 513] 15: 671

For enforcing lien against vessels navigating Great Lakes. [69 Fed. 1009; 34 U. S. App. 119] 17: 94

Action to enforce liability of stockholder of foreign corporation. [96 Fed. 396] 37: 513

Against bank directors, for improper declaration and distribution of dividend. [86 Fed. 505; 58 U. S. App. 648] 30: 223

Action by nonresident on claim barred, where it arose against one who became resident after accrual. [79 Fed. 238; 51 U. S. App. 48] 24: 539

**LIMITATION OF ACTIONS—continued.**

- Mode of raising sufficiency of complaint showing action barred.  
     [64 Fed. 84; 27 U. S. App. 508] 12: 52
- Bar of prosecution by lapse of time; liability of sureties on bail bond.  
     [83 Fed. 151; 48 U. S. App. 531] 27: 488

**Interruption of statute—In general.**

- By fact that rights were considered very doubtful.  
     [70 Fed. 529; 37 U. S. App. 1] 17: 251
- Change of residence before bar complete.  
     [61 Fed. 738; 26 U. S. App. 85; 25 L. R. A. 470] 9: 587
- Running of statute against action on bond on appeal to certain court, not affected by appeal from judgment of such court. [94 Fed. 921] 36: 549
- What constitutes fleeing from justice interrupting running of limitation.  
     [91 Fed. 494; 62 U. S. App. 550] 33: 652

**—By part payment.**

- By one of two makers of joint and several notes.  
     [66 Fed. 40; 27 U. S. App. 650] 13: 319
- Part payment by maker on purchase-money notes as against third persons not jointly liable. [94 Fed. 468] 36: 330

**—By suit, generally.**

- By pendency of suit affecting title to land in possession of person not a party.  
     [65 Fed. 441; 24 U. S. App. 573] 13: 1
- Suit to enforce judgment in one county suspends running against, in each county docketed. [71 Fed. 912; 25 U. S. App. 582] 18: 384
- Commencement of partition suit in one court, effect of subsequent suit in other court. [70 Fed. 529; 37 U. S. App. 1, 199] 17: 251
- Against railroad receivers, by suit against company.  
     [67 Fed. 456; 31 U. S. App. 644] 14: 469

**—What sufficient commencement of suit.**

- When intervening suit in admiralty deemed to have been commenced.  
     [81 Fed. 876; 48 U. S. App. 430] 26: 665
- By issuing writ. [73 Fed. 116; 38 U. S. App. 424] 19: 388
- By issuance of writ of scire facias to revive judgment. [92 Fed. 313] 34: 360
- Right to bring new suit after time limited, where prior suit dismissed.  
     [72 Fed. 648; 38 U. S. App. 328] 19: 58
- In equity, suing out process, and bona fide attempt to serve it.  
     [85 Fed. 827; 56 U. S. App. 655] 29: 431
- Issuance of subpoena to be served outside territorial jurisdiction. Id.
- Suit by United States to annul patents. Id.

**—Amendment.**

- Effect of amendment to show diverse citizenship.  
     [70 Fed. 209; 36 U. S. App. 81] 16: 498
- Assignment of additional specifications of negligence in amended petition as new cause of action. [86 Fed. 1; 52 U. S. App. 720] 29: 523
- Effect of amendment whereby plaintiff sues for use of third party.  
     [83 Fed. 133; 52 U. S. App. 406] 27: 485
- Amendment changing beneficiary in action for wrongful death.  
     [92 Fed. 820] 35: 24
- Stating new cause of action in suit for breach of warranty. [95 Fed. 305] 37: 70
- Laches not defense to amended bill where not defense to original bill.  
     [87 Fed. 41; 59 U. S. App. 238] 30: 510

**—New suit.**

- Rule that second action deemed continuance of first, not apply where second suit states different cause of action. [95 Fed. 305] 37: 70
- C. C. A.—29.

## LIMITATION OF ACTIONS—continued.

**Raising by demurrer.**

Not available under general demurrer. [54 Fed. 87; 12 U. S. App. 1] 4: 199

When question cannot be raised by demurrer. [96 Fed. 720] 37: 564

**Federal courts following state statutes and decisions.**

State statutes; construction and application by Federal court.

[51 Fed. 97; 4 U. S. App. 416] 2: 110

[53 Fed. 872; 10 U. S. App. 574] 4: 73

Federal court applying state statute of limitations in equity suit.

[49 Fed. 315; 4 U. S. App. 160] 1: 256

[58 Fed. 457; 19 U. S. App. 220] 7: 308

[79 Fed. 848; 51 U. S. App. 194] 25: 208

Federal court's discretion as to following state statute.

[71 Fed. 60; 36 U. S. App. 361] 17: 592

Not bind court of equity on question of laches.

[87 Fed. 51; 57 U. S. App. 730] 30: 520

State statutes not binding on admiralty courts. [94 Fed. 180] 36: 135

Courts of admiralty governed by analogies of.

[49 Fed. 583; 1 U. S. App. 101] 1: 337

Limitation by state statute not applicable to suit to enforce lien for damage to cargo on vessel. [94 Fed. 180] 36: 135

State statutes regarded as rules of decision in Federal courts.

[73 Fed. 116; 38 U. S. App. 424] 19: 388

Federal following state court decision as to, in case of fraud or concealment.

[92 Fed. 868] 35: 62

As to real property, Federal court following decision of state court.

[84 Fed. 1015; 52 U. S. App. 496] 28: 679

State decisions construing statute of limitations as to land, a rule of property.

[70 Fed. 529; 37 U. S. App. 1, 199] 17: 251

**Conflict of laws as to.**

Law of forum governs as to.

[94 Fed. 468] 36: 330

Action for wrongful death, conflict of laws. [96 Fed. 720] 37: 564

[51 Fed. 188; 2 U. S. App. 222] 2: 163

Action in one state to enforce liability of stockholder in corporation of other state. [99 Fed. 635] 40: 22

Law governing, for death by negligence in other state.

[64 Fed. 84; 27 U. S. App. 508] 12: 52

Law governing, in action between nonresidents.

[73 Fed. 116; 38 U. S. App. 424] 19: 388

Where residence changed before bar complete.

[61 Fed. 738; 26 U. S. App. 85, 25 L. R. A. 470] 9: 587

**LIMITATION OF LIABILITY.**

See ADMIRALTY; CARRIERS; SHIPPING.

For Delay in Transmitting Messages, see TELEGRAPHS AND TELEPHONES.

**LIMITED PARTNERSHIP.**

See PARTNERSHIP.

**LIQUIDATED DAMAGES.**

See DAMAGES.

**LIS PENDENS.**

Failure to file, who protected. [85 Fed. 157; 42 U. S. App. 709] 29: 63

Doctrine of, not applicable to purchaser of negotiable corporation bonds.

[54 Fed. 759; 6 U. S. App. 469] 4: 561

Effect against mortgagee purchasing under mortgage executed prior to suit.

[77 Fed. 774; 46 U. S. App. 619] 23: 454

**LIS PENDENS**—continued.

Purchaser from plaintiff, pending suit, chargeable with notice of unrecorded deed. [79 Fed. 736; 49 U. S. App. 174] 25: 181

Purchase after dismissal of appeal and before bill of review.

[59 Fed. 808; 19 U. S. App. 423] 8: 277

Party filing plea of, must come within strictest rules of correct pleading.

[86 Fed. 427; 57 U. S. App. 535] 30: 162

Rights of United States in property acquired from party to pending suit.

[99 Fed. 598] 39: 669

**LITERARY PROPERTY.**

See COPYRIGHT.

**LITTORAL RIGHTS.**

See NAVIGABLE WATERS.

**LIVE STOCK.**

Shipment of, see CARRIERS.

**LOAN COMPANIES.**

See BUILDING AND LOAN ASSOCIATIONS.

**LOANS.**

Lien for, see MARITIME LIENS.

**LOCAL PREJUDICE.**

As Ground for Removal, see REMOVAL OF CAUSES.

**LOCATION.**

Of Boundaries, see BOUNDARIES.

Of Mining Claims, see MINES AND MINERALS.

Of Railroad on Public Lands, see PUBLIC LANDS.

**LOGS AND LOGGING.**

Scale bill as evidence. [56 Fed. 203; 12 U. S. App. 281] 5: 474

Cut from government land, proper remedy for recovery of, by United States.

[92 Fed. 881] 35: 75

Log booms, etc., not inhibited by appropriations for improvement of river.

[81 Fed. 658; 48 U. S. App. 443] 26: 547

Right to continue boom in navigable waters after act prohibiting obstructions.

Id.

Question whether boom complies with state statute not a Federal question. Id.

**LOST INSTRUMENTS.**

Equity jurisdiction of suit to establish. [66 Fed. 799; 31 U. S. App. 244] 14: 97

**LOTTERIES.**

Nonmailable matter, see

Note, 30: 90

Validity of postmaster general's order forbidding delivery of letters advertising lottery.

[67 Fed. 1000; 37 U. S. App. 71] 15: 153

Refusal to deliver letters or pay money orders to party engaged in.

Id.

Using mails to carry on, under assumed name.

[87 Fed. 324; 58 U. S. App. 729] 30: 670

Evidence that business advertised through mails was a lottery.

[63 Fed. 426; 24 U. S. App. 25] 12: 339

What constitutes, see

Note, 12: 346

Numbering bonds on which value depends, according to order in which applications received.

[63 Fed. 426; 24 U. S. App. 25] 12: 339

**LUNATICS.**

See INCOMPETENT PERSONS.

**MAILS.**

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**MAINTENANCE.**

See CHAMPERTY AND MAINTENANCE.

**MALICE.**

See LIBEL AND SLANDER; MALICIOUS PROSECUTION.

**MALICIOUS PROSECUTION.**

See also FALSE IMPRISONMENT.

Mental suffering as an element of, see Note, 11: 568

Proper remedy for person unjustly imprisoned under process obtained maliciously and without probable cause.

[86 Fed. 405; 57 U. S. App. 145] 30: 140

Requisites, want of probable cause, termination in plaintiff's favor.

[58 Fed. 534; 19 U. S. App. 157] 7: 351

Necessity of separating claim for, from claim on restitution bond.

Id.

Liability of corporations for, see

Note, 39: 14

Liability of person making arrest and originating proceedings in which made.

[94 Fed. 343] 36: 285

Action for, against street railway company for conductor causing passenger's arrest.

[88 Fed. 437; 59 U. S. App. 588] 31: 573

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[94 Fed. 52] 36: 75

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When existence of, a question of law.

[94 Fed. 52] 36: 75

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[55 Fed. 217; 14 U. S. App. 297] 5: 77

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[94 Fed. 52] 36: 75

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[61 Fed. 87; 23 U. S. App. 356] 9: 376

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[94 Fed. 52] 36: 75

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[94 Fed. 343] 36: 285

**Advice of counsel.**

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[94 Fed. 52] 36: 75

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[55 Fed. 217; 14 U. S. App. 297] 5: 77

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To compel issuance of license to foreign corporation, see

Note, 24: 38

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[57 Fed. 324; 13 U. S. App. 411] 6: 349

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[85 Fed. 177; 56 U. S. App. 33] 29: 78

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[57 Fed. 324; 13 U. S. App. 411] 6: 349

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[61 Fed. 914; 22 U. S. App. 418] 10: 154

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[51 Fed. 97; 4 U. S. App. 416] 2: 110

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[65 Fed. 634; 31 U. S. App. 109] 13: 64

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[75 Fed. 352; 41 U. S. App. 515] 21: 392

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[60 Fed. 249; 23 U. S. App. 10] 8: 607

Effect of decision as *res judicata*.

Id.

**MANDAMUS**—continued.**To enforce judgment or debt or compel levy of tax, generally.**See also *infra*, **To compel levy of tax to pay judgment.**Against drainage commissioners, for failure to collect taxes in money.  
[69 Fed. 867; 34 U. S. App. 169] 16: 530From Federal court, to compel collection of tax, injunction by state court.  
[80 Fed. 686; 49 U. S. App. 376] 25: 469To compel levy of tax to pay town bonds.  
[78 Fed. 596; 42 U. S. App. 236] 24: 257To enforce collection of judgment against municipality, equivalent to an execution.  
[92 Fed. 313] 34: 360To compel payment of judgment against drainage district, demand as condition precedent.  
[85 Fed. 928; 57 U. S. App. 416] 29: 578

When claim equitable rather than legal. Id.

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Generally. [77 Fed. 582; 40 U. S. App. 614] 23: 348

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[86 Fed. 264; 58 U. S. App. 579] 30: 30

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[49 Fed. 40; 2 U. S. App. 125] 1: 148

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[49 Fed. 40; 2 U. S. App. 125] 1: 148

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Against union school district, levy by several townships, necessity of specifying mode of apportionment in writ. Id.

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Against city. [60 Fed. 387; 23 U. S. App. 29] 9: 37

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[74 Fed. 489; 41 U. S. App. 414] 20: 622Against county, bonds under bridge contract.  
[80 Fed. 10; 52 U. S. App. 6] 25: 306**To court and court officers.**

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- To compel allowance of appeal from refusal to consolidate actions.  
[62 Fed. 218; 8 U. S. App. 645] 10: 446
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[71 Fed. 764; 30 U. S. App. 646] 18: 309
- To compel circuit court to sign decree and order answer stricken from files,  
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[51 Fed. 929; 5 U. S. App. 97] 2: 542
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[87 Fed. 750; 59 U. S. App. 703] 31: 221
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**MARINE INSURANCE.**

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**MARITIME CONTRACTS.**

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[51 Fed. 954; 2 U. S. App. 349] 2: 569

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[100 Fed. 104] 40: 301

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[80 Fed. 545; 53 U. S. App. 211] 25: 628

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[86 Fed. 656; 57 U. S. App. 41] 30: 330

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[71 Fed. 426; 34 U. S. App. 542] 18: 344

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[72 Fed. 793; 38 U. S. App. 344] 19: 194

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[76 Fed. 993; 44 U. S. App. 708] 22: 671
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**MARITIME LIENS.**

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[62 Fed. 407; 22 U. S. App. 344] 10: 454
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[62 Fed. 407; 22 U. S. App. 344] 10: 454
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[87 Fed. 1001; 59 U. S. App. 513] 31: 345
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[51 Fed. 954; 2 U. S. App. 349] 2: 569
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- For supplies and services, see Note, 15: 679
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- In case of general average, see Note, 20: 365
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[64 Fed. 496; 26 U. S. App. 231] 12: 361
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[75 Fed. 684; 33 U. S. App. 592] 21: 501

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Imputing to principal notice to agent that vessel is chartered.

[54 Fed. 396; 6 U. S. App. 389] 4: 385

What sufficient to put supply men on notice that vessel chartered. Id.

Knowledge that, as between general and special owner, latter is solely liable.

[53 Fed. 281; 11 U. S. App. 673] 3: 530

Supplies ordered by master in foreign port, what must appear to create lien.

[79 Fed. 365; 50 U. S. App. 18] 24: 641

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[72 Fed. 283; 38 U. S. App. 223] 18: 559

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[68 Fed. 926; 30 U. S. App. 318] 15: 675

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[54 Fed. 396; 6 U. S. App. 389] 4: 385

[57 Fed. 664; 15 U. S. App. 236] 6: 493

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Agency for captain precluding idea that credit of vessel relied on.

[74 Fed. 842; 41 U. S. App. 62] 21: 141

Presumption as to whether credit was given to vessel or owner.

[55 Fed. 523; 3 U. S. App. 559] 5: 206

Presumption as to necessity of credit of vessel for supplies furnished in foreign port. [72 Fed. 283; 38 U. S. App. 223] 18: 559

Presumption against, when repairs made on managing owner's order.

[92 Fed. 1007; 63 U. S. App. 650] 35: 148

Supplies furnished in foreign port, effect of knowledge that master had sufficient cash to pay for same. [79 Fed. 365; 50 U. S. App. 18] 24: 641

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[100 Fed. 104] 40: 301

No presumption of necessity for credit of ship for supplies in foreign port.

[72 Fed. 793; 38 U. S. App. 344] 19: 194

Power of state to impose liens on domestic vessels for repairs made or necessities furnished in home ports of state. [100 Fed. 104] 40: 301

Work and materials in fitting steamer for different trade considered as furnished for repairs. Id.

**—For wages and services.**See also *infra*, **Priority**.

Of master.

[57 Fed. 845; 15 U. S. App. 229] 6: 608

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[75 Fed. 598; 24 U. S. App. 559] 21: 448

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[94 Fed. 876] 36: 524

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Of seamen's lien on cargo.	[93 Fed. 686]	35: 544
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- Waiver and extinguishment, see Note, 17: 102  
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- Limitation by state statute for injuries to goods on vessel not applicable to suit to enforce lien for damage to cargo. [94 Fed. 180] 36: 135  
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[68 Fed. 43; 29 U. S. App. 651; 33 L. R. A. 759] 15: 201

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Pledgeor compelling resort first to other securities of pledgee wrongfully pledging pledgeor's securities. [86 Fed. 1023; 57 U. S. App. 225] 30: 503

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[71 Fed. 560; 37 U. S. App. 626] 18: 242

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**MASTER AND SERVANT.**

I. THE RELATION; CONTRACTOR OR SERVANT.

II. DUTY AND LIABILITY OF MASTER TO SERVANT.

III. SELECTION AND RETENTION OF EMPLOYEES; NEGLIGENCE OF INCOMPETENT SERVANT.

IV. SERVANT'S ASSUMPTION OF RISK.

V. CONTRIBUTORY NEGLIGENCE.

VI. FELLOW SERVANTS AND THEIR NEGLIGENCE.

VII. CAUSE OF INJURY.

VIII. LIABILITY OF MASTER TO THIRD PERSONS.

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**I. THE RELATION; CONTRACTOR OR SERVANT.**

Created by contract. [92 Fed. 749] 34: 653

Who is master of driver of truck hired for a special purpose.

[78 Fed. 610; 47 U. S. App. 362; 37 L. R. A. 33] 24: 261

Who is an independent contractor. [71 Fed. 939; 30 U. S. App. 541] 18: 394

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**Respective rights in invention.**

Right of servant to enjoin employer from using patented machine.

[80 Fed. 906; 51 U. S. App. 291] 26: 243

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## MASTER AND SERVANT—continued.

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[60 Fed. 445; 13 U. S. App. 639] 9: 59

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[81 Fed. 814; 52 U. S. App. 355] 26: 632

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[93 Fed. 359] 35: 345

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[60 Fed. 583; 20 U. S. App. 425] 9: 138

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[95 Fed. 116] 36: 677

Statutory lien for wages, not dissolved by bankruptcy proceedings against employer.

Id.

Proof of performance of service alleged, essential to recovery of wages.

[94 Fed. 975] 36: 595

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[74 Fed. 656; 41 U. S. App. 292] 21: 45

## II. DUTY AND LIABILITY OF MASTER TO SERVANT.

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[100 Fed. 378] 40: 421

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[63 Fed. 102; 27 U. S. App. 184] 11: 51

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[93 Fed. 240] 34: 558

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[89 Fed. 677; 60 U. S. App. 661] 32: 309

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[78 Fed. 610; 47 U. S. App. 362; 37 L. R. A. 33] 24: 261

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[74 Fed. 195; 34 U. S. App. 743] 20: 390

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[94 Fed. 73] 36: 94

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[92 Fed. 572] 34: 550

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[87 Fed. 298; 59 U. S. App. 9] 30: 653

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[91 Fed. 223; 63 U. S. App. 550] 33: 466

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[74 Fed. 186; 34 U. S. App. 727] 20: 381

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[58 Fed. 756; 15 U. S. App. 262] 7: 485

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- Inference from condition discovered after accident. [61 Fed. 259; 23 U. S. App. 319] 9: 487
- Inferring negligence from nature and circumstances of accident. [84 Fed. 767; 56 U. S. App. 217] 28: 524
- Not presumed, from mere occurrence of accident. [80 Fed. 865; 53 U. S. App. 291] 26: 201
- As to insufficiency of appliance, from the breaking thereof. [59 Fed. 990; 20 U. S. App. 334] 8: 438

**Of railroad company, generally; exemption.**

- Duty of railroad company to give notice of whereabouts of other trains on sending out special trains. [84 Fed. 944; 56 U. S. App. 37; 43 L. R. A. 349] 28: 644
- Liability to injured employee on train run by yard master without authority. [65 Fed. 969; 27 U. S. App. 681] 13: 249
- Yard master's unauthorized use of train, not ratified by paying engineer while running. Id.
- Employees of express company not bound by contract with railroad company of which no knowledge, of transportation at own risk. [87 Fed. 420; 59 U. S. App. 55] 31: 157
- Failure to give signal of approaching train to section hand knowing of its approach. [92 Fed. 553] 34: 530
- Making flying switch in daytime, as to employee familiar with practice. [98 Fed. 683] 39: 226
- Failure to stop handcar or send flagman to listen for train, effect of, as to section hand knowing of its approach. Id.
- Management of special train following regular train. [67 Fed. 881; 29 U. S. App. 583] 15: 52
- Engines on side track running onto main track. [57 Fed. 536; 15 U. S. App. 193] 6: 474
- Whether employment of one watchman to prevent, sufficient. Id.
- Switchman crushed between car and pole projecting from another car, company's negligence, question for jury. [85 Fed. 608; 50 U. S. App. 505] 29: 374
- Evidence as to fog; that yard insufficiently manned. [57 Fed. 536; 15 U. S. App. 193] 6: 474
- Instruction assuming that firemen are promoted to be engineers as matter of course. [63 Fed. 407; 24 U. S. App. 103] 11: 260
- Question for jury, whether injury to section hand due to foreman's negligence. [57 Fed. 1037; 12 U. S. App. 662] 6: 681
- Statute forbidding contracts exempting railroad from liability to employees, applicable to receivers. [78 Fed. 693; 47 U. S. App. 339] 24: 280
- Validity of stipulation by member of railroad relief association to release company. [76 Fed. 439; 40 U. S. App. 448] 22: 264
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**Care of injured employees.**

- Care required. [67 Fed. 659; 33 U. S. App. 147] 14: 609
- Hospital for free treatment for railroad employees as charitable institution. [60 Fed. 365; 19 U. S. App. 612; 23 L. R. A. 581] 9: 14

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Liability for injuries to injured servant through negligence of attendants in hospital maintained by master. [66 Fed. 44; 32 U. S. App. 48] 13: 323

**Rules and regulations.**

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Lack of special rules directing care towards employee where work not complex and such rules not customary. [100 Fed. 384] 40: 427

Failure to print rule made and enforced. [92 Fed. 491] 34: 494

Negligence of railroad in adoption and use of.

[84 Fed. 944; 56 U. S. App. 37; 43 L. R. A. 349] 28: 644

Reasonableness and sufficiency, questions of law. Id.

Whether rules reasonably proper, not submitted to jury when no evidence that servant misled by failure to adopt rules. [100 Fed. 45] 40: 270

Requiring section foreman to flag handcars where track curved or not clear, reasonable. [70 Fed. 24; 36 U. S. App. 23] 16: 604

Rule for government of "freight brakeman" not admissible in evidence in action for injury to foreman injured because of defect in brakes.

[100 Fed. 415] 40: 465

Admissibility of rules of other companies governing manner of approaching curves. [79 Fed. 903; 51 U. S. App. 157] 25: 223

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**Duty to warn or instruct.**

Change of condition, increasing risk. [57 Fed. 915; 12 U. S. App. 688] 6: 636

Obvious risks. [74 Fed. 195; 34 U. S. App. 743] 20: 390

Duty to instruct lad as to use of machine.

[74 Fed. 608; 45 U. S. App. 45] 20: 555

Custom to carefully instruct employees as to use of machine. Id.

As to duty to warn of danger incident to known conditions.

[51 Fed. 562; 7 U. S. App. 359] 2: 380

Servant aware of conditions, but ignorant of risk incident thereto.

[55 Fed. 932; 17 U. S. App. 22] 5: 326

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Risk actually known and appreciated. Id.

Dangers so open and apparent that he ought to know and appreciate them. Id.

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Act for protection of railroad employees, scope and extent of.

[78 Fed. 693; 47 U. S. App. 339] 24: 280

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[74 Fed. 186; 34 U. S. App. 727] 20: 381

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[88 Fed. 944; 50 U. S. App. 413] 32: 143

As to each particular defect in cars switchman required to handle.

[96 Fed. 713] 38: 307

Necessity of showing that switchman instructed as to manner of uncoupling cars.

[50 Fed. 725; 6 U. S. App. 86] 1: 633

Delegating duty to inform sectionmen of movements of trains.

[51 Fed. 562; 7 U. S. App. 359] 2: 380

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[50 Fed. 725; 6 U. S. App. 86] 1: 633

Conductor's duty as to warning sectionman removing landslide of hidden danger of further landslide.

[97 Fed. 255] 38: 151

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[65 Fed. 940; 21 U. S. App. 656] 13: 221

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**Machinery and appliances—In general.**

See also *infra*, **Delegation of duty.**

Duty of railroad companies to furnish safe appliances, see Note, 37: 8  
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[71 Fed. 378; 30 U. S. App. 606] 18: 139

Whether master should have known of defective condition of boiler, question for jury. [80 Fed. 470; 51 U. S. App. 265] 25: 566

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[74 Fed. 608; 45 U. S. App. 45] 20: 555

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Duty to use ordinary diligence and not most efficient mode in providing appliances. [91 Fed. 223; 63 U. S. App. 550] 33: 466

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[56 Fed. 804; 18 U. S. App. 10] 6: 142

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Duty of mine operator as to appliances used, to prevent accumulation of gas or other explosive substances. [94 Fed. 329] 36: 364

Explosion of boiler from excessive head of steam.

[70 Fed. 944; 71 Fed. 531; 30 U. S. App. 549] 17: 524

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[73 Fed. 970; 34 U. S. App. 759] 20: 147

Accident caused by breaking of rope, evidence insufficient to justify submission to jury. [80 Fed. 865; 53 U. S. App. 291] 26: 201

Submitting to jury question as to sufficiency of rope used in loading piling on car. [98 Fed. 49] 38: 641

Expert evidence as to whether reasonable care exercised in selecting rope. Id.

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[55 Fed. 595; 12 U. S. App. 132] 5: 220

[60 Fed. 71; 20 U. S. App. 326] 8: 471

[74 Fed. 155; 36 U. S. App. 682] 20: 366

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[59 Fed. 45; 19 U. S. App. 315] 7: 656

**—Injury to seaman or stevedore.**

Vessel's liability to stevedore's employee from defective appliances.

[83 Fed. 519; 42 U. S. App. 666] 31: 496

Injury to seamen by breaking of fastening holding boom, caused by something extraordinary. [93 Fed. 592] 35: 467

Ship liable for injuries to seaman by barrel thrown off defective skid.

[94 Fed. 871] 36: 519

Furnishing new stiff rope to seaman painting mast.

[86 Fed. 886; 58 U. S. App. 104] 30: 675

Injury to seaman from defect in hoisting apparatus known to vessel's officers and easily remedied. [67 Fed. 797; 28 U. S. App. 424] 14: 652

Failure to use staging or connecting planks in transferring cotton from barge to steam-boat. [99 Fed. 520] 39: 620

Failure of electric lights while unloading cotton at night from barge on steam-boat. Id.

Injury to stevedore by fall of defective stanchion.

[52 Fed. 390; 8 U. S. App. 129] 3: 155

Injury to stevedore's employee from shackle rigged for use during exchange of whitening apparatus demanded by stevedore.

[60 Fed. 105; 23 U. S. App. 72] 8: 512

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Injury to stevedore's employee from defect in shackle pointed out to mate. *Id.*  
 Allegations insufficient to show that dangerous appliances furnished by ship's officers. [77 Fed. 324; 41 U. S. App. 438, 467, 609] 23: 187

**—Scaffolds.**

Duty to use ordinary care in erecting scaffolds. [89 Fed. 677; 60 U. S. App. 661] 32: 309  
 Misleading instruction as to duty as to scaffold. *Id.*  
 Bridge contractor liable for safety of scaffold. *Id.*

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Duty to warn, of danger from set screw on. [65 Fed. 940; 21 U. S. App. 656] 13: 221  
 Immaterial whether workman moved against shaft involuntarily or was pushed against it. [55 Fed. 932; 17 U. S. App. 22] 5: 326  
 Employing set screw on revolving shaft in ordinary way. [65 Fed. 940; 21 U. S. App. 656] 13: 221  
 Duty to protect exposed coupling on revolving shaft. [69 Fed. 923; 36 U. S. App. 32] 16: 545  
 Permitting key fastening pulley to shaft to project. [88 Fed. 944; 50 U. S. App. 413] 32: 143  
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 Not absolutely bound to furnish safe cars. [67 Fed. 524; 30 U. S. App. 176; 31 L. R. A. 321] 14: 509  
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 As to cars with different heights of drawheads. [71 Fed. 145; 30 U. S. App. 561] 18: 9  
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 Due care in inspecting grab iron on freight car, question for jury. [94 Fed. 781] 37: 1  
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 Presumption of knowledge of defect in railroad car not overcome by employing competent inspector. *Id.*  
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[63 Fed. 45; 27 U. S. App. 190] 11: 93
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[63 Fed. 407; 24 U. S. App. 103] 11: 260

**—Locomotives.**

- See also Note, 17: 23
- Requested instruction as to expectation of injury from engine of particular type.  
[57 Fed. 362; 13 U. S. App. 520] 6: 387
- Duty as to keeping engine in proper condition.  
[67 Fed. 214; 30 U. S. App. 196] 14: 373
- When master chargeable with servant's knowledge of defects in locomotive.  
[71 Fed. 460; 34 U. S. App. 432] 18: 130
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[69 Fed. 559; 44 U. S. App. 1] 16: 317
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[76 Fed. 125; 40 U. S. App. 181] 22: 99
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[56 Fed. 808; 9 U. S. App. 564] 6: 147
- Master's duty performed by furnishing place free from dangers latent or not obvious, or instructing servant expressly as to existing dangers.  
[100 Fed. 45] 40: 270
- Instruction as to measure of duty in respect to locomotive, sufficiency.  
[57 Fed. 362; 13 U. S. App. 520] 6: 387
- Insufficiency of evidence to show negligence in furnishing defective locomotive.  
[69 Fed. 559; 44 U. S. App. 1] 16: 317
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**Place—In general.**

See also *infra*, **Delegation of duty.**

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- Duty to provide reasonably safe place. [70 Fed. 219; 36 U. S. App. 1] 17: 71
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- Sufficiency of evidence that hatch usually open and unlighted.  
[94 Fed. 221] 36: 208
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- Leaving bank of earth in dangerous condition.  
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[67 Fed. 507; 32 U. S. App. 143] 14: 492
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- Open hatchway provided with usual combings. [71 Fed. 314; 33 U. S. App. 362] 18: 54
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- Negligence in failing to support roof of mine or remove rock. [53 Fed. 65; 10 U. S. App. 439] 3: 433
- Failure to support roof of mine or remove rock. Id.
- Specific duty of mine owner as to ventilation and safety of miner. [89 Fed. 54; 59 U. S. App. 519] 32: 156
- Failure to provide light at bottom of mine shaft. [86 Fed. 433; 58 U. S. App. 575] 30: 168
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**Railroad track, roadbed, switches, bridges, etc.**

- Duty of railroad company to provide safe track and roadbed. [82 Fed. 979; 42 U. S. App. 567] 27: 287
- Degree of care required, how measured. Id.
- Keeping railroad track in reasonably safe condition. [63 Fed. 527; 27 U. S. App. 316] 11: 332
- Competency of experienced engineer, familiar with track to testify whether condition liable to throw coupling pin out on down grade. [97 Fed. 423] 38: 239
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- Duty to remove or secure loose rocks overhanging railroad track. [94 Fed. 745] 36: 450
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- Maintaining railroad bridge with low tie beams.  
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- Permitting blocking of frogs to become defective.  
[100 Fed. 256] 40: 372
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[78 Fed. 94; 42 U. S. App. 282; 35 L. R. A. 135] 23: 669
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**III. SELECTION AND RETENTION OF EMPLOYEES; NEGLIGENCE OF INCOMPETENT SERVANT.**

- Care required in employing fellow servants.  
[63 Fed. 407; 24 U. S. App. 103] 11: 260
- Knowledge of employee's drunkenness causing similar accident.  
[65 Fed. 941; 31 U. S. App. 192] 13: 222
- Delegation of duty to agent.  
[73 Fed. 634; 43 U. S. App. 113] 19: 623
- When employer chargeable with notice of employee's incompetency.  
Id.
- Showing employee's general reputation for drunkenness and incompetency.  
Id.
- Promise to substitute competent man, refusal of instruction as to proof of.  
[83 Fed. 989; 55 U. S. App. 221] 28: 250
- Incompetency of foreman not ground of liability when injury caused by negligence of fellow servant.  
[82 Fed. 174; 51 U. S. App. 489] 27: 105
- Sufficient allegation of master's negligence in employing incompetent winchman.  
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[100 Fed. 561] 40: 545
- Foreman's statement when former instance of negligence reported as *res gestæ*.  
[65 Fed. 941; 31 U. S. App. 192] 13: 222
- Evidence of alleged incompetent servant's previous negligent acts.  
[65 Fed. 952; 31 U. S. App. 213] 13: 233
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- Continuing work after assurance that incompetent servant would be replaced as contributory negligence.  
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## IV. SERVANT'S ASSUMPTION OF RISK.

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- Only those from defects known or plainly observable. [93 Fed. 737] 35: 562
- Risk resulting from act or omission of master. [85 Fed. 608; 56 U. S. App. 505] 29: 374
- Increased risk from unknown change of conditions. [57 Fed. 915; 12 U. S. App. 688] 6: 636
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- Risk outside scope of employment, see Note, 38: 321
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- From open, unlighted hatch. [94 Fed. 221] 36: 208
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- By stevedore, risk from use of unsafe appliances. [83 Fed. 519; 42 U. S. App. 666] 31: 496
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- Defective tools, appliances, and places of work, see Notes, 38: 325, 329
- Neglect to furnish reasonably safe system to protect guy ropes extending across street from place where servant working. [99 Fed. 679] 40: 69
- Risk from unexploded blast. [69 Fed. 814; 34 U. S. App. 132] 16: 442
- Of explosion from missed shot in mine, where drilling recommenced after explosion without ascertaining as to existence of missed shots. [100 Fed. 561] 40: 545
- Mine owner's failure to properly timber mine. [70 Fed. 219; 36 U. S. App. 1] 17: 71
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- Incompetency or negligence of fellow servants, see Note, 38: 319
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**Obvious and ordinary defects and dangers; minors.**

- Obvious or latent dangers, see Note, 38: 318  
 Risk not necessarily obvious because defect in machine is. [81 Fed. 320; 55 U. S. App. 8] 26: 427  
 Ordinary risks and dangers, general rule. [74 Fed. 155; 36 U. S. App. 682] 20: 366  
 From obvious defect, generally. [82 Fed. 550; 53 U. S. App. 492] 27: 227  
 All ordinary risks. [67 Fed. 524; 30 U. S. App. 176; 31 L. R. A. 321] 14: 509  
 Patent defects, new and temporary bridge. [60 Fed. 555; 23 U. S. App. 86] 9: 133  
 From patently defective appliances. [57 Fed. 378; 13 U. S. App. 547] 6: 403  
 Obvious deficiency of light. [65 Fed. 48; 27 U. S. App. 519] 12: 507  
 Use of patently defective appliances under orders. [94 Fed. 871] 36: 519  
 Inexperienced or youthful employee, see Note, 38: 318  
 Minor servant, obvious risks, absence of guard required by statute. [79 Fed. 900; 51 U. S. App. 74] 25: 220  
 Boy fifteen years old getting hand into unprotected cogwheel. Id.  
 By minor, known risks, common and apparent. [55 Fed. 943; 12 U. S. App. 260] 5: 341  
 Question for jury whether minor understood danger. [58 Fed. 756; 15 U. S. App. 262] 7: 485

**MASTER AND SERVANT—continued.****Notice to master; promise to repair.**See also *infra*, **Contributory negligence.**

Promise to remedy defect or remove danger, see Note, 38: 320

From obviously dangerous machine, where employer continued its use after attention called thereto. [92 Fed. 572] 34: 550

By servant who had given notice of defect, failure to remedy within twenty days. [79 Fed. 590; 50 U. S. App. 27] 25: 110

Master's liability for reasonable time after promising to repair obvious defect. [94 Fed. 73] 36: 94

Reliance upon promise to repair made by unauthorized servant. [80 Fed. 257; 46 U. S. App. 697] 25: 397

Reliance on promise to remove danger. [49 Fed. 723; 1 U. S. App. 96] 1: 423

Impossibility of doing work with reasonable safety. Id.

Pending performance of promise. [56 Fed. 973; 12 U. S. App. 574] 6: 190

In using defective appliance after promise of new one. [84 Fed. 866; 55 U. S. App. 437] 28: 540

Question for jury as to servant's authority to promise repair. [80 Fed. 257; 46 U. S. App. 697] 25: 397

Continuing in employment after master's promise to guard dangerous coupling. [69 Fed. 923; 36 U. S. App. 32] 16: 545

**Instances of defective railroad track and roadbed, etc.**

Of dangers from defective railroad track, must be obvious and threatening. [97 Fed. 423] 38: 239

From faulty construction and maintenance of railroad. [49 Fed. 538; 4 U. S. App. 221] 1: 354

Open culverts, brakeman continuing in employment. [85 Fed. 392; 56 U. S. App. 323] 29: 219

Additional risk incident to steep grades of railroad. [82 Fed. 979; 42 U. S. App. 567] 27: 287

Switchman bound to notice apparent defects in roadbed, but not to examine. [56 Fed. 1009; 12 U. S. App. 514] 6: 225

Risks incident to defective roadbed, when presumed. [87 Fed. 849; 58 U. S. App. 377] 31: 255

Risks incident to hole existing two months between rails in large railway yard. Id.

Whether switchman knew that switch lever extended above title, question for jury. [82 Fed. 550; 53 U. S. App. 492] 27: 227

Of low overhead bridge. [95 Fed. 406] 37: 137

Of brush overhanging track, obscuring view. [66 Fed. 931; 29 U. S. App. 529] 14: 199

Incident to unblocked switches and guard rails. [96 Fed. 298] 37: 499

Not relieve company for omission to block switches as required by statute. Id.

Absence of watchman from burning railroad bridge. [57 Fed. 362; 13 U. S. App. 520] 6: 337

[67 Fed. 524; 30 U. S. App. 176; 31 L. R. A. 321] 14: 509

**Instances of defective cars and engines.**

Extra risk due to defective condition of cars in repair yard. [96 Fed. 713] 38: 307

From defects in foreign car, knowledge or opportunity to learn of custom not to inspect such cars. [21 Fed. 520; 41 U. S. App. 567] 21: 520

From defect in design of locomotive. [57 Fed. 362; 13 U. S. App. 520] 6: 337

Defects in car deadwoods recently discovered. [63 Fed. 407; 24 U. S. App. 103] 11: 260

**MASTER AND SERVANT—continued.**

- From ragged sliver upon engine wheel, open and apparent.  
[76 Fed. 125; 40 U. S. App. 181] 22: 99
- From known defect in air brake. [49 Fed. 723; 1 U. S. App. 96] 1: 428
- From obvious difference in construction of foreign cars or engines from those employed by company. [80 Fed. 988; 53 U. S. App. 297] 27: 361
- Different heights of drawheads known to employee coupling cars.  
[71 Fed. 145; 30 U. S. App. 561] 18: 9
- Brakeman caught between brake wheel and standing car, request for an instruction ignoring peculiar location and character of brake wheel.  
[82 Fed. 720; 54 U. S. App. 222] 27: 333

**Other railroad cases.**

- Operation of railroads, see Note, 38: 327
- By being over road fifty days preceding injury. [95 Fed. 406] 37: 137
- Experienced railroad man caught between engines on different tracks.  
[60 Fed. 553; 23 U. S. App. 62] 9: 130
- By station master, presumed familiarities with manner with which trains approach curve. [79 Fed. 903; 51 U. S. App. 157] 25: 223
- Engine left on side track running on to main track.  
[57 Fed. 536; 15 U. S. App. 193] 6: 474
- By engineer, from nonobservance by other employees of reasonable rules.  
[84 Fed. 944; 56 U. S. App. 37; 43 L. R. A. 349] 28: 644
- Employee on handcar, neglect to give warning of approaching train.  
[51 Fed. 562; 7 U. S. App. 359] 2: 380
- Going out on running board of hard-running locomotive.  
[69 Fed. 559; 44 U. S. App. 1] 16: 317
- Additional hazard from custom of engineers to leave firemen in charge of engines when switching. [63 Fed. 407; 24 U. S. App. 103] 11: 260
- Going between cars to couple them. [63 Fed. 228; 25 U. S. App. 16] 12: 595
- Usual number of section men voluntarily exposing themselves to danger which they should have known, though force insufficient. [97 Fed. 255] 38: 151
- Known failure to furnish chocks in loading piles on car.  
[98 Fed. 49] 38: 641

**V. CONTRIBUTORY NEGLIGENCE.**

- Rule as to contributory negligence in Federal court.  
[61 Fed. 568; 21 U. S. App. 151] 9: 542
- Servant's contributory negligence prevents recovery.  
[74 Fed. 155; 36 U. S. App. 682] 20: 366
- Duty to exercise care commensurate with danger. Id.
- Rule as to avoiding consequences of, negligent servant injured by wilful servant. [79 Fed. 590; 50 U. S. App. 27] 25: 110
- When ignoring contributory negligence justified.  
[57 Fed. 125; 16 U. S. App. 17] 6: 281
- Effect of slight contributory negligence where master's negligence gross.  
[64 Fed. 462; 29 U. S. App. 1] 12: 225
- Complaint alleging lighting of match after discovering gas.  
[89 Fed. 54; 59 U. S. App. 519] 32: 156
- When knowledge of danger not, explosion of boiler.  
[80 Fed. 470; 51 U. S. App. 265] 25: 566
- Question for jury, where evidence conflicting as to employee's knowledge of defect. [92 Fed. 567] 34: 545
- Relying on presumption that reasonable care exercised to make place safe.  
[92 Fed. 572] 34: 550
- Care required of employee before crossing private railway operated as part of rolling mill plant. [88 Fed. 23; 59 U. S. App. 627] 31: 363
- Newly employed servant not fully instructed as to danger from cars in iron works.  
[100 Fed. 45] 40: 270

**MASTER AND SERVANT—continued.**

- Stepping over revolving shaft while on own errand.  
[88 Fed. 944; 50 U. S. App. 413] 32: 143
- In passing under coupling of revolving shaft.  
[69 Fed. 923; 36 U. S. App. 32] 16: 545
- Removing braces holding vertical marble slabs in place on wagon.  
[74 Fed. 155; 36 U. S. App. 682] 20: 366
- Right to assume that skids placed under foreman's order are safe.  
[70 Fed. 669; 44 U. S. App. 189] 17: 330
- Pushing car on track narrowed at point of accident.  
[58 Fed. 668; 19 U. S. App. 253] 7: 424
- What constitutes, mode of shifting heavy box.  
[56 Fed. 973; 12 U. S. App. 574] 6: 190
- Of servant, injured through defect in roof of mine, what constitutes.  
[79 Fed. 726; 48 U. S. App. 339] 25: 171
- Miner's knowledge of previous falls of rock.  
[53 Fed. 65; 10 U. S. App. 439] 3: 433
- Contributory negligence of miner. Id.
- Youth and inexperience to be considered.  
[81 Fed. 320; 55 U. S. App. 8] 26: 427
- Boy engaged in dangerous work outside of regular duties.  
[58 Fed. 756; 15 U. S. App. 262] 7: 485
- Inexperienced servant going into place unnecessary to proper performance of work.  
[90 Fed. 774; 63 U. S. App. 519] 33: 269
- Compliance with commands, overhanging bank.  
[56 Fed. 984; 12 U. S. App. 534] 6: 201
- In continuing to use unsafe tools, in reliance on promise to furnish better ones.  
[84 Fed. 866; 55 U. S. App. 437] 28: 540
- Where boss gave no warning.  
[64 Fed. 462; 29 U. S. App. 1] 12: 225
- Sufficiency of evidence to support finding of negligence and freedom from contributory negligence.  
[58 Fed. 668; 19 U. S. App. 253] 7: 424
- Ignorance of change of conditions increasing risks.  
[56 Fed. 804; 18 U. S. App. 10] 6: 142
- Of person killed, question for jury.  
[61 Fed. 568; 21 U. S. App. 151] 9: 542
- Testimony how accident "might" have been caused, insufficient to justify submission to jury.  
[49 Fed. 206; 4 U. S. App. 202] 1: 229
- Question for jury.  
[50 Fed. 718; 4 U. S. App. 360] 1: 625  
[60 Fed. 999; 22 U. S. App. 94] 9: 321
- In continuing work upon assurance that incompetent fellow servant would be replaced by competent one.  
[83 Fed. 989; 55 U. S. App. 221] 28: 250

**Of seaman or stevedore.**

- Able seaman furnished stout rope block and boatswain to paint mast.  
[86 Fed. 886; 58 U. S. App. 104] 30: 675
- Of stevedore, falling down unguarded hatchway.  
[74 Fed. 748; 41 U. S. App. 324] 21: 60
- Unnecessarily walking over hatchway in vessel's deck at night.  
[89 Fed. 646; 60 U. S. App. 716] 32: 282
- Of stevedore, in using winch with unguarded cogs, failure to adopt simple expedient.  
[49 Fed. 111; 1 U. S. App. 20] 1: 181
- Attempting to throw turns of rope off drum while in motion.  
[54 Fed. 896; 2 U. S. App. 618] 4: 654
- Stevedore using winch with unguarded cog wheels, knowledge of condition.  
[51 Fed. 91; 8 U. S. App. 49] 2: 102

**Instances of defective cars and engines.**

- Going on running board of defective engine while running.  
[64 Fed. 951; 29 U. S. App. 201] 12: 479

**MASTER AND SERVANT—continued.**

- Climbing up ladder on side of car knowing grab iron defective.  
[72 Fed. 121; 25 U. S. App. 642] 18: 467
- Failure to use ordinary prudence in using cars without grab irons.  
[91 Fed. 224; 63 U. S. App. 553] 33: 468
- Of fireman, in remaining on locomotive with knowledge of defect in air brake.  
[49 Fed. 723; 1 U. S. App. 96] 1: 428
- Placing bare hand on ragged splinter projecting over half an inch from locomotive wheel.  
[76 Fed. 125; 40 U. S. App. 181] 22: 99
- Brakeman failing to notice the kind of car he was about to couple.  
[82 Fed. 162; 54 U. S. App. 196] 26: 521
- Failure to examine brake after inspection of regular inspectors.  
[100 Fed. 415] 40: 465
- Switchman charged with notice of probable defect in car standing on special sidetrack on which defective cars placed.  
[96 Fed. 713] 38: 307

**Instances of defective railroad track, roadbed, etc.**

- Existence of similar defects at similar places in railroad yard considered, to show employee's knowledge.  
[87 Fed. 849; 58 U. S. App. 377] 31: 255
- Extra hand working in different yards not chargeable with defective blocking of switch in one yard used in night-time.  
[100 Fed. 256] 40: 372
- When employee presumed to know of dangerous defect in roadbed. Id.
- Brakeman alighting at place distant from that assigned by company and falling into open culvert.  
[85 Fed. 392; 56 U. S. App. 323] 29: 219
- Master's failure to block frog where servant's negligence contributes to injury.  
[73 Fed. 642; 37 U. S. App. 654] 19: 631
- Switchman injured by hole in track, duty to select another place.  
[61 Fed. 927; 18 U. S. App. 683] 10: 166
- Servant's right to assume that track is part of employer's system.  
[66 Fed. 922; 21 U. S. App. 682] 14: 190

**Coupling and uncoupling cars.**

- Refusal of requested instruction as to neglect to use coupling stick.  
[61 Fed. 927; 18 U. S. App. 683] 10: 166
- Of brakeman, guilty in making coupling, question for jury.  
[60 Fed. 704; 13 U. S. App. 110; 23 U. S. App. 1] 9: 229
- Stepping between moving cars on dark night to make coupling.  
[73 Fed. 642; 37 U. S. App. 654] 19: 631
- Going between moving cars to uncouple them.  
[91 Fed. 224; 63 U. S. App. 553] 33: 468
- Expert evidence to show special danger in particular mode of coupling.  
[63 Fed. 793; 24 U. S. App. 295] 11: 439

**Other railroad cases.**

- Assuming that cars on side track safely secured.  
[87 Fed. 133; 59 U. S. App. 283] 32: 44
- Assuming that side track reasonably safe for use. Id.
- Failure to provide sufficient watch for railroad bridge.  
[67 Fed. 524; 30 U. S. App. 176; 31 L. R. A. 321] 14: 509
- Attempting to cross track with bucket of mortar at place obstructed by lumber where train running at excessive rate of speed.  
[100 Fed. 731] 40: 673
- In permitting water to get too low in locomotive boiler.  
[71 Fed. 378; 30 U. S. App. 606] 18: 139
- Of engineer, in running his train without a flagman, question for jury.  
[79 Fed. 934; 51 U. S. App. 111] 25: 247
- Imputing to fireman engineer's neglect to keep lookout.  
[57 Fed. 125; 16 U. S. App. 17] 6: 281
- Switchman's ignorance or negligence in not discovering improper manner in which cars loaded, question for jury.  
[85 Fed. 608; 56 U. S. App. 505] 29: 374

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Walking on track without lookout, boss's assurance.	[49 Fed. 881; 1 U. S. App. 113]	1: 468
Walking on railroad track without looking back.	[74 Fed. 279; 46 U. S. App. 41]	20: 52
Standing near track, at work, without constantly looking for train.	[74 Fed. 460; 38 U. S. App. 659]	20: 593
Stepping on much-used track in freight yard without looking for train.	[94 Fed. 946]	36: 574
Passing in front of moving car, direction from foreman.	[85 Fed. 914; 57 U. S. App. 464]	29: 475
Alighting from handcar in front of moving dump car.	[53 Fed. 61; 10 U. S. App. 422]	3: 429
Compliance with commands, jumping from moving train.	[56 Fed. 200; 12 U. S. App. 271]	5: 471
Standing on top of car while crossing bridge.	[63 Fed. 530; 27 U. S. App. 313]	11: 335
In attempting to step from one car to other.	[66 Fed. 931; 29 U. S. App. 529]	14: 199
Statement by sectionman killed by landslide as to danger of one occurring at any time, admissible as <i>res gestæ</i> .	[97 Fed. 255]	38: 151

**Disobedience of rule.**

Violation of practically abandoned rule.	[80 Fed. 483; 51 U. S. App. 256]	25: 579
Servant's right to show that rule violated at time of injury habitually disregarded.	[91 Fed. 224; 63 U. S. App. 553]	33: 468
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Brakeman's disobedience of rule, conductor's assent.	[60 Fed. 370; 19 U. S. App. 596; 23 L. R. A. 768]	9: 20
Disregard of rule as to coupling cars.	[50 Fed. 718; 4 U. S. App. 369]	1: 625
Habitual disregard, effect of notice.		Id.
Fireman's failure to seek to enforce obedience of regulations by engineer.	[49 Fed. 723; 1 U. S. App. 96]	1: 428
Going between moving cars to uncouple them in violation of rule.	[80 Fed. 488; 47 U. S. App. 647]	25: 585
Instruction required that no recovery if rule of employer voluntarily violated.	[91 Fed. 224; 63 U. S. App. 553]	33: 468
Failure to observe rule requiring inspection of links and drawheads.	[84 Fed. 772; 52 U. S. App. 442]	28: 207
Uncoupling cars while in motion.	[73 Fed. 647; 43 U. S. App. 89]	19: 636
Being on top of car instead of on ground.	[65 Fed. 196; 24 U. S. App. 551]	12: 574
Going between cars to couple or uncouple them at engineer's order.	[63 Fed. 228; 25 U. S. App. 16]	12: 595
Protecting handcar by flag, where track curved or not clear.	[70 Fed. 24; 36 U. S. App. 23]	16: 604

**VI. FELLOW SERVANTS AND THEIR NEGLIGENCE.**

Employee's right to assume that care taken in employing careful fellow servants.	[100 Fed. 384]	40: 427
What law governs application of fellow-servant rule; conflict of laws.	[79 Fed. 934; 51 U. S. App. 111]	25: 247
Act modifying fellow-servant rule not unconstitutional.	[78 Fed. 693; 47 U. S. App. 339]	24: 280
Statute modifying fellow-servant rule, applicable to receiver of railroad.		Id.
Extent of modification of fellow-servant rule.		Id.

**MASTER AND SERVANT—continued.**

Common-law rule modified, not abrogated, by provision as to injury resulting from negligence of superior agent or officer. [100 Fed. 247] 40: 369

Fellow servant rule, change by statute as to railroad employees.

[56 Fed. 461; 12 U. S. App. 404] 5: 560

[57 Fed. 1037; 12 U. S. App. 662] 6: 681

Railroad in custody of receiver at time of injury.

[56 Fed. 461; 12 U. S. App. 404] 5: 560

Receivers within law abrogating fellow-servant rule.

[67 Fed. 219; 32 U. S. App. 111] 14: 377

Instruction held not to withdraw fellow-servant doctrine from jury.

[79 Fed. 263; 48 U. S. App. 331] 24: 564

Refusal of request for fellow-servant rule, unprotected machinery.

[55 Fed. 932; 17 U. S. App. 22] 5: 326

**Who are fellow servants—In general.**

Who are fellow servants, see

Notes, 8: 668; 9: 596; 31: 286

Decision of state court as to who are fellow servants, Federal court.

[51 Fed. 182; 4 U. S. App. 574] 2: 157

[52 Fed. 362; 6 U. S. App. 172] 3: 121

Federal court not bound by state decisions as to who are fellow-servants.

[98 Fed. 683] 39: 226

All in employ of single master.

[73 Fed. 974; 36 U. S. App. 693] 20: 151

What rule governs in determining.

[51 Fed. 182; 4 U. S. App. 574] 2: 157

[52 Fed. 362; 6 U. S. App. 172] 3: 121

Of sewer gang, power to hire, discharge, and direct, subject to superintendent.

[58 Fed. 525; 19 U. S. App. 245] 7: 344

Repairer in mill and employee called in by him to assist in repairing machine.

[100 Fed. 378] 40: 421

Employee empowered to employ necessary workmen.

[89 Fed. 677; 60 U. S. App. 661] 32: 309

Boss, and member of gang.

[64 Fed. 462; 29 U. S. App. 1] 12: 225

Miner charged with duty of inspection and other miners.

[76 Fed. 349; 40 U. S. App. 349] 22: 196

In coal mine, subject to pit boss and superintendent.

[56 Fed. 810; 12 U. S. App. 490] 6: 148

Drill operator in mine and helper engaged in common service of running drill.

[100 Fed. 561] 40: 545

Engineer in charge of engine operating cage in mine, and miner descending in cage.

[86 Fed. 433; 58 U. S. App. 575] 30: 168

Foreman in quarry and workman under him.

[74 Fed. 186; 34 U. S. App. 727] 20: 381

Foreman and gang of men grading street.

[73 Fed. 974; 36 U. S. App. 693] 20: 151

**—As between seamen, stevedores, etc.**

Master and engineer of steamboat. [61 Fed. 364; 20 U. S. App. 570] 9: 521

Seamen ordered to work by mate and latter assisting in work.

[93 Fed. 218] 35: 281

Members of crew of steamboat.

[60 Fed. 517; 23 U. S. App. 19] 9: 124

Mate assisting in work and seamen.

[93 Fed. 218] 35: 281

Fall tender and crew.

[60 Fed. 517; 23 U. S. App. 19] 9: 124

Foreman and stevedore under his charge.

[74 Fed. 748; 41 U. S. App. 324] 21: 60

**—As between train dispatcher or telegraph operator and train operatives.**

Train dispatcher and engineer.

[65 Fed. 952; 31 U. S. App. 213] 13: 233

Telegraph operator and engineer.

Id.

[99 Fed. 657] 40: 56



**MASTER AND SERVANT—continued.**

Telegraph operator and fireman. [57 Fed. 125; 16 U. S. App. 17] 6: 281

Local telegraph operator and train employees.

[74 Fed. 965; 44 U. S. App. 606] 21: 186

—**As between railroad superintendent or foreman and member of gang.**

Superintendent of excavation of railroad bed and laborer.

[69 Fed. 814; 34 U. S. App. 132] 16: 442

Foreman, power to hire, discharge, control, and keep time of laborers.

[56 Fed. 804; 18 U. S. App. 10] 6: 142

Foreman of track repairers; power to hire and supervise.

[51 Fed. 182; 4 U. S. App. 574] 2: 157

Wreck master and workmen employed to remove wreck.

[60 Fed. 555; 23 U. S. App. 86] 9: 133

Foreman and member of gang clearing away railway wreck.

[87 Fed. 258; 59 U. S. App. 1] 31: 282

Foreman of railway machine shop and man in shop, where foreman no authority to hire or discharge.

[87 Fed. 302; 52 U. S. App. 587] 31: 306

Foreman of freight car repair shop and employee therein.

[92 Fed. 491] 34: 494

Carpenter engaged with common laborers in setting posts along railroad, statutory definition.

[85 Fed. 379; 54 U. S. App. 653] 29: 206

Foreman of railroad construction gang, power to hire and discharge, assisting.

[48 Fed. 62; 4 U. S. App. 49] 1: 37

Employee and road master in charge of reconstruction.

[48 Fed. 57; 4 U. S. App. 25] 1: 25

Track foreman and member of gang. [70 Fed. 480; 25 U. S. App. 411] 17: 215

Foreman and member of gang of track repairers.

[51 Fed. 182; 4 U. S. App. 574] 2: 157

Foreman and member of section crew.

[70 Fed. 28; 36 U. S. App. 31] 16: 609

Foreman calling out track on which car to be switched not superior officer of member of switching crew.

[100 Fed. 247] 40: 369

Foreman of bridge gang, temporary, assisting in labor.

[57 Fed. 378; 13 U. S. App. 547] 6: 403

Foreman of railroad bridge gang and men under him.

[73 Fed. 970; 34 U. S. App. 759] 20: 147

—**As between train operatives inter sese.**

Train employees respectively of lessor and lessee company.

[82 Fed. 975; 53 U. S. App. 620] 27: 385

Brakeman, conductor, and engineer. [51 Fed. 517; 10 U. S. App. 197] 2: 358

Conductors and other employees on trains.

[63 Fed. 107; 27 U. S. App. 227; 25 L. R. A. 833] 11: 56

Brakeman and conductor.

[63 Fed. 102; 27 U. S. App. 184] 11: 51

Duty to instruct that fireman and brakeman are fellow servants.

[63 Fed. 407; 24 U. S. App. 103] 11: 260

Engineer and fireman oiling turntable by former's direction.

[98 Fed. 958] 39: 359

Fireman and brakeman.

[63 Fed. 407; 24 U. S. App. 103] 11: 260

Brakeman of coal company and engineer of railroad company.

[51 Fed. 518; 1 U. S. App. 276] 2: 360

Conductor and brakeman of freight train.

[61 Fed. 738; 26 U. S. App. 85; 25 L. R. A. 470] 9: 587

Brakeman of one train, conductor and engineer of another.

[50 Fed. 728; 6 U. S. App. 75; 17 L. R. A. 190] 1: 636

Fireman on one train and conductor on other, leaving switch open.

[63 Fed. 114; 27 U. S. App. 238] 11: 63

**MASTER AND SERVANT—continued.**

- Conductor of construction train leaving switch open, and fireman on passenger train. [63 Fed. 107; 27 U. S. App. 227; 25 L. R. A. 833] 11: 56  
 Conductor on one train leaving switch open, and employee on other train. Id. [63 Fed. 114; 27 U. S. App. 238] 11: 63  
 Brakeman of rear section and engineer (conductor) of forward section. [52 Fed. 362; 6 U. S. App. 172] 3: 121

**—As between train operatives and other employees.**

- Yard or car clerk, engineer and train hands. [56 Fed. 188; 5 U. S. App. 443] 5: 461  
 Engineer and conductor of work train and laborer thereon. [59 Fed. 993; 15 U. S. App. 294] 8: 663  
 Bridge builder and repairer and employees in charge of train in which former transported. [97 Fed. 252] 38: 148  
 Laborer on work train, conductor and engineer of freight train. Id.  
 Conductor and foreman of railroad bridge, carpenters riding on train. [64 Fed. 563; 29 U. S. App. 88] 12: 301  
 Car inspector and brakeman. [65 Fed. 196; 24 U. S. App. 551] 12: 574  
 Locomotive engineer and hostler's helper. [67 Fed. 569; 34 U. S. App. 1] 14: 547  
 Conductor of repair train on main line, section foreman of branch line. [56 Fed. 988; 12 U. S. App. 541] 6: 205  
 Conductor of delayed train, and section man removing obstruction under his direction. [97 Fed. 255] 38: 151

**—Other railroad employees.**

- Engine hostler and wiper employed by railroad company and car accountant employed by terminal company. [69 Fed. 124; 29 U. S. App. 687] 16: 175  
 Locomotive inspector and other employees in yards. [70 Fed. 944, 71 Fed. 531; 30 U. S. App. 549] 17: 524  
 Switchman and car inspectors. [56 Fed. 1009; 12 U. S. App. 514] 6: 225  
 Sectionmen and laborers on repair trains. [62 Fed. 232; 8 U. S. App. 597] 10: 352  
 Yard switchmen and sectionmen. [50 Fed. 725; 6 U. S. App. 86] 1: 633  
 Employees in roundhouse putting engine into condition for use. [62 Fed. 363; 27 U. S. App. 157] 11: 88  
 Inspector whose duty to inspect foreign cars, and brakeman. [94 Fed. 781] 37: 1

**Negligence of and master's responsibility for—In general.**

See also *supra*, III.

- Incompetency or negligence of fellow servants assumed, see Note, 38: 319  
 Instruction distinguishing between incompetency and negligence of fellow servant. [100 Fed. 384] 40: 427  
 Master's liability for risks from fellow servants not contemplated. [69 Fed. 814; 34 U. S. App. 132] 16: 442  
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 Failure of dumper to properly splice ropes furnished by master, injury to fellow dumper. [85 Fed. 758; 56 U. S. App. 604] 29: 427  
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- Of master and fellow servant. [69 Fed. 823; 32 U. S. App. 635] 16: 457  
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[70 Fed. 219; 36 U. S. App. 1]	17: 71
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[58 Fed. 525; 19 U. S. App. 245]	7: 344
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[50 Fed. 725; 6 U. S. App. 86]	1: 633
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[73 Fed. 642; 37 U. S. App. 654]	19: 631
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## VIII. LIABILITY OF MASTER TO THIRD PERSONS.

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[60 Fed. 503; 13 U. S. App. 681] 9: 110
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**MECHANICS' LIENS.**

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[79 Fed. 517; 49 U. S. App. 139] 25: 46

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[68 Fed. 105; 31 U. S. App. 704; 34 L. R. A. 625] 15: 289

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Id.

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[90 Fed. 322; 62 U. S. App. 112] 33: 69

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[79 Fed. 517; 49 U. S. App. 139] 25: 46

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[52 Fed. 241; 6 U. S. App. 186; 18 L. R. A. 305] 3: 60

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[68 Fed. 966; 29 U. S. App. 698] 16: 68

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[68 Fed. 966; 29 U. S. App. 698] 15: 289

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[63 Fed. 11; 22 U. S. App. 537] 11: 11

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[86 Fed. 725; 57 U. S. App. 286] 32: 31

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Id.

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[67 Fed. 84; 31 U. S. App. 381] 14: 314

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[58 Fed. 732; 16 U. S. App. 196] 7: 471

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Id.

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[86 Fed. 725; 57 U. S. App. 286] 32: 31

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[68 Fed. 105; 31 U. S. App. 704; 34 L. R. A. 625] 15: 289

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[69 Fed. 7; 30 U. S. App. 325] 16: 112

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[86 Fed. 725; 57 U. S. App. 286] 32: 31

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[57 Fed. 753; 16 U. S. App. 115] 6: 539

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Id.

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[67 Fed. 84; 31 U. S. App. 387] 14: 314

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[68 Fed. 105; 31 U. S. App. 704; 34 L. R. A. 625] 15: 230
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[68 Fed. 90; 31 U. S. App. 675; 41 L. R. A. 458] 15: 273
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- Payments to, applicable to unsecured claims. Id.
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[68 Fed. 105; 31 U. S. App. 704; 34 L. R. A. 625] 15: 239
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[68 Fed. 90; 31 U. S. App. 675; 41 L. R. A. 458] 15: 273
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[49 Fed. 309; 4 U. S. App. 140] 1: 249
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[68 Fed. 90; 31 U. S. App. 675] 15: 273
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- Over mortgages or statutory liens.  
[68 Fed. 105; 31 U. S. App. 704; 34 L. R. A. 625] 15: 239
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[80 Fed. 631; 42 U. S. App. 496] 26: 38
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[68 Fed. 105; 31 U. S. App. 704; 34 L. R. A. 625] 15: 289

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[67 Fed. 84; 31 U. S. App. 387] 14: 314

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[58 Fed. 732; 16 U. S. App. 196] 7: 471

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[59 Fed. 19; 18 U. S. App. 380] 7: 603

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[68 Fed. 966; 29 U. S. App. 698] 16: 68

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[70 Fed. 209; 36 U. S. App. 81] 16: 498

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[93 Fed. 355] 35: 341

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[71 Fed. 916; 37 U. S. App. 523] 18: 386

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[90 Fed. 322; 62 U. S. App. 112] 33: 69

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[68 Fed. 90; 31 U. S. App. 675; 41 L. R. A. 458] 15: 273

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[67 Fed. 84; 31 U. S. App. 387] 14: 314

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[59 Fed. 19; 18 U. S. App. 380] 7: 603

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[52 Fed. 241; 6 U. S. App. 186; 18 L. R. A. 305] 3: 60

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[67 Fed. 84; 31 U. S. App. 387] 14: 314

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[58 Fed. 174; 14 U. S. App. 695; 23 L. R. A. 687] 7: 152

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[54 Fed. 867; 6 U. S. App. 403] 4: 629

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[91 Fed. 511; 63 U. S. App. 37] 33: 658

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[81 Fed. 269; 49 U. S. App. 453] 26: 397

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[60 Fed. 249; 23 U. S. App. 10] 8: 607

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[73 Fed. 994; 36 U. S. App. 634] 20: 244

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[53 Fed. 41; 10 U. S. App. 415] 3: 418

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[71 Fed. 560; 37 U. S. App. 626] 18: 242

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[51 Fed. 338; 10 U. S. App. 1] 2: 252

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[52 Fed. 250; 10 U. S. App. 322] 3: 69

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[51 Fed. 338; 10 U. S. App. 1] 2: 252

[52 Fed. 250; 10 U. S. App. 322] 3: 69

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[82 Fed. 89; 48 U. S. App. 452] 27: 63

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[82 Fed. 89; 48 U. S. App. 452] 27: 63

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[94 Fed. 788] 36: 494

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[76 Fed. 296; 47 U. S. App. 36] 22: 334

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[57 Fed. 340; 13 U. S. App. 279] 6: 365

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[90 Fed. 379; 61 U. S. App. 741] 33: 113

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[63 Fed. 925; 27 U. S. App. 493] 11: 503

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[65 Fed. 165; 27 U. S. App. 564; 27 L. R. A. 614] 12: 531

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[64 Fed. 499; 29 U. S. App. 71] 12: 239

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## **MUNICIPAL CORPORATIONS.**

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[52 Fed. 560; 8 U. S. App. 160] 3: 202

Federal jurisdiction of suit to annul city ordinance fixing rates unreasonably low. [93 Fed. 849] 35: 631

Necessary parties to such suit. Id.

Power of mayor and council to bind city by contract for water and light for term of years. [98 Fed. 657] 39: 211

Power to contract for water supply for municipal purposes.  
[94 Fed. 916] 30: 1

With water company, provision for purchase, decree enforcing.  
[62 Fed. 853; 27 U. S. App. 165; 27 L. R. A. 827] 10: 653

Objection that city disabled to take title. Id.

Conditions of title and right of possession passing to city. Id.

Mode of determining "fair and equitable value" of works. Id.

## MUNICIPAL CORPORATIONS—continued.

- City estopped to deny liability to pay for water furnished. [98 Fed. 657] 39: 211
- Estoppel to deny validity or existence of as against water company. [76 Fed. 271; 40 U. S. App. 257; 34 L. R. A. 518] 22: 171
- Liability of water company for fire resulting from failure to furnish agreed pressure. [72 Fed. 227; 30 U. S. App. 749] 18: 519
- For lease of hydrants, discretion of city council as to terms of. [76 Fed. 271; 40 U. S. App. 257; 34 L. R. A. 518] 22: 171
- Recovery by water company for water furnished under invalid agreement by city, to exempt company from taxation. [85 Fed. 359; 52 U. S. App. 512] 29: 568
- Common-law powers to grant franchise to water company. [61 Fed. 782; 18 U. S. App. 458; 24 U. S. App. 81] 10: 60
- Validity of ordinance granting right to operate waterworks and supply city and inhabitants for twenty-five years. [85 Fed. 359; 52 U. S. App. 512] 29: 568
- Who may impeach validity of exclusive grant of water franchise. [76 Fed. 271; 40 U. S. App. 257; 34 L. R. A. 518] 22: 171
- Invalidity of exclusive grant of right to conduct water through streets as defense against city's liability for water rentals. Id.

## VIII. INDEBTEDNESS; JUDGMENTS

- Conclusiveness of Judgment against, see JUDGMENT.
- Dissolution and reincorporation, effect on indebtedness, see Note, 33: 506
- Right of creditor to have surplus of one year applied to payment of indebtedness of former year. [81 Fed. 522; 52 U. S. App. 226] 26: 492
- Necessity of providing for interest and sinking fund before incurring indebtedness. [81 Fed. 742; 52 U. S. App. 395] 26: 589
- Liable for interest on judgment which it fails to pay. [91 Fed. 574; 63 U. S. App. 455] 34: 15
- Revival of judgment against, time for taking proceedings. [51 Fed. 97; 4 U. S. App. 416] 2: 110
- Creditors' suit against, by judgment creditors of school board of. [91 Fed. 574; 63 U. S. App. 455] 34: 15
- Right of holders to qualified judgment against city. [87 Fed. 843; 58 U. S. App. 109] 31: 249

**Warrants.**

- No power to incur debts, and issue warrants therefor, unless specially authorized, or power clearly implied. [97 Fed. 449] 38: 264
- Issued to raise funds for unauthorized purpose of securing location of state capital. Id.
- Evidence of invalidity, or defenses available against original payee, excluded in action by bona fide purchaser. Id.
- Warrants on drainage fund, abandonment of work, estoppel to show that fund exhausted. [81 Fed. 645; 52 U. S. App. 348] 26: 508
- Statute of limitations not available to city against holders of. [87 Fed. 829; 59 U. S. App. 131] 31: 238
- Right of purchaser of void warrants to recover amount paid, as for money had and received. [97 Fed. 449] 38: 264
- Estoppel to deny validity of assessments by drawing warrants upon them. Id.

**Mandamus to compel payment of judgment.**

See also Note, 25: 475

- Questions considered, judgment conclusive as to liability. [49 Fed. 40; 2 U. S. App. 125] 1: 148
- When city has refused to issue bonds. [78 Fed. 88; 41 U. S. App. 726] 23: 663

**MUNICIPAL CORPORATIONS—continued.**

Whether levy confined to single year or covering number of years.	Id.
Payment out of surplus revenues for current year, including in budget for ensuing year.	[49 Fed. 40; 2 U. S. App. 125] 1: 148
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Duty as to protecting other judgment beside relator's.	Id.
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**Limitation of indebtedness.**

Constitutional and statutory limitations of municipal indebtedness, see  
Note, 36: 6

See also *infra*, X.

Presumption that statutory amount not exceeded.

[71 Fed. 341; 37 U. S. App. 481] 18: 61

Decision of state court as to, binding on Federal court.

[81 Fed. 742; 52 U. S. App. 395] 26: 589

For erection of public buildings. [60 Fed. 193; 23 U. S. App. 208] 8: 554

Claim for water furnished under void contract with city within prohibition against. [94 Fed. 916] 36: 1

Debt not created by bonds issued to fund valid indebtedness.

[86 Fed. 272; 57 U. S. App. 593] 30: 38

Street improvement warrants issued in anticipation of collection of assessment, not within prohibition. [79 Fed. 719; 46 U. S. App. 282] 25: 164

Purchase of drainage works and issuance of warrants for price within exception against prohibition of increase of debt.

[87 Fed. 829; 59 U. S. App. 131] 31: 238

Charter provision permitting issue of railroad aid bonds to any amount.

[68 Fed. 849; 25 U. S. App. 354] 16: 28

What property considered exempt in computing limit of indebtedness. Id.

What constitutes indebtedness. [76 Fed. 921; 44 U. S. App. 687] 22: 618

Agreement to pay monthly rental for hydrants. Id.

Agreement to pay annual rental for term of years for water and light, not create indebtedness for aggregate amount of rentals. [98 Fed. 657] 39: 211

**IX. PUBLIC IMPROVEMENTS.**

As defects in title, see

Note, 40: 612

Power to construct sewers at cost of property benefited, special act, constitutionality of. [85 Fed. 27; 55 U. S. App. 730] 28: 667

Ratification of contract made by agent for both parties.

[66 Fed. 427; 31 U. S. App. 340; 29 L. R. A. 188] 13: 559

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[66 Fed. 140; 25 U. S. App. 166] 13: 375

Completion of work by city after contractor's default on different plan.

[84 Fed. 106; 55 U. S. App. 522] 28: 286

City's liability for improvement of street, where company required to pay for improvements. [72 Fed. 336; 36 U. S. App. 499] 19: 139

Lien of city for improvements. [66 Fed. 689; 30 U. S. App. 762] 14: 59

City's liability where assessments on abutting property unauthorized.

[64 Fed. 283; 28 U. S. App. 108; 29 L. R. A. 401] 12: 100

[72 Fed. 336; 36 U. S. App. 499] 19: 139

Making loan to pay for, after completion.

[71 Fed. 341; 37 U. S. App. 481] 18: 61

**MUNICIPAL CORPORATIONS—continued.**

- Estoppel to deny power to make contract for where benefit received.  
[87 Fed. 829; 59 U. S. App. 131] 31: 238
- Necessity of comptroller's certificate to contract for.  
[92 Fed. 822; 63 U. S. App. 304] 35: 27
- Contract for construction of sewer to be paid for from proceeds of bonds.  
[74 Fed. 668; 41 U. S. App. 400] 20: 667
- Meaning of "materials furnished on the ground" in street contracts.  
[66 Fed. 440; 30 U. S. App. 140] 13: 572
- Construction of provision of contract for reserving specified per cent until completion of street improvement. Id.

**Preliminaries.**

- Vote of people unnecessary to authorize.  
[71 Fed. 341; 37 U. S. App. 481] 18: 61
- Consent of city council necessary to contract for construction of water reservoir.  
[92 Fed. 822; 63 U. S. App. 304] 35: 27
- What constitutes consent by city council to contract for construction of water reservoir. Id.

**Awarding contract; rights and duties of bidders; agreements between.**

- Modification of bid after opening. [91 Fed. 28; 62 U. S. App. 392] 33: 319
- Right of lowest responsible bidder to insist upon award of contract.  
[78 Fed. 28; 49 U. S. App. 17, 37 L. R. A. 630] 23: 631
- Purpose of provision requiring public work to be awarded to lowest reliable bidder. Id.
- Right of taxpayers to enjoin violation of law respecting lowest responsible bidder. Id.
- Duty of public authorities to obtain information as to nature or cost of work for benefit of bidders.  
[91 Fed. 833] 34: 91
- Authority of chief engineer of sanitary district of city as to representations to intending bidder for contract. Id.
- Sanitary district of city not liable for failure of individual trustees to communicate knowledge as to work to intending bidder. Id.
- Releasing bidder for work for negligent omission to consider certain features in making bid.  
[91 Fed. 28; 62 U. S. App. 392] 33: 319
- Agreements tending to restrain natural rivalry in bidding.  
[83 Fed. 372; 48 U. S. App. 596; 45 L. R. A. 410] 28: 178
- Agreement between rivals for, purpose, and not actual injury to public, the test of validity. Id.
- Unlawful agreement to stifle competition, validity of further agreement to share losses and profits. Id.

**Contractor's bond.**

- Validity and requisites of. [84 Fed. 114; 54 U. S. App. 499] 28: 292
- Who may maintain action on, necessity of city's consent. Id.
- Liability of aldermen to creditor of contractor for taking common law, instead of statutory, bond. Id.

**Assessments.**

- City council's decision that abutting property chargeable for, final.  
[96 Fed. 679] 37: 556
- Who registered owner for purpose of assessment. [95 Fed. 57] 36: 654
- City liable for. [87 Fed. 829; 59 U. S. App. 131] 31: 238
- City estopped, by drawing warrants against fund composed of assessments, to deny their validity. Id.
- Liability to contractor for damages caused by delay in levying a valid assessment.  
[79 Fed. 719; 48 U. S. App. 282] 25: 164
- Contractor's rights against city for refusal to levy second assessment after first held invalid.  
[94 Fed. 65] 36: 88

## MUNICIPAL CORPORATIONS—continued.

## X. BONDS.

For County Bonds, see COUNTIES.

For Railroad-Aid Bonds, see RAILROADS.

When mandamus will lie to compel levy to pay town bonds.

[78 Fed. 596; 42 U. S. App. 236] 24: 257

Lien on lands of persons procuring act under which issued, after act adjudged void.

[95 Fed. 883] 37: 309

Running for full time allowed from date interest begins.

[88 Fed. 449; 60 U. S. App. 78] 31: 585

Recovery on unauthorized negotiable bonds issued.

[74 Fed. 528; 41 U. S. App. 68] 20: 635

Liability on bonds not affected by dissolution and reincorporation with less territory.

[91 Fed. 594; 63 U. S. App. 442] 33: 501

Mandamus to compel authorities to issue refunding bonds.

[74 Fed. 489; 41 U. S. App. 414] 20: 622

Mandamus to compel issuance, in what body authority vested; evidence.

[60 Fed. 387; 23 U. S. App. 29] 9: 37

No right to repudiate bonds on returning to old organization.

[94 Fed. 457] 36: 318

Federal jurisdiction of suit on bond containing direct promise to pay, though state statute provides for payment out of special fund.

[98 Fed. 387] 39: 106

Conclusiveness of judgment in action on coupons from, in subsequent action on different coupons from same bonds.

[97 Fed. 270] 38: 167

Action in own name by one to whom bonds transferable by delivery, transferred for that purpose.

[100 Fed. 56] 40: 281

Production, on trial, of bonds payable to bearer, prima facie evidence of ownership.

[99 Fed. 905] 40: 161

Presumption of ownership from production by plaintiff's counsel on trial.

[99 Fed. 202] 39: 462

**Power to issue, generally.**

Implication from power to borrow.

[83 Fed. 669; 48 U. S. App. 681] 27: 668

As of course, renewal or refunding negotiable bonds.

[82 Fed. 568; 53 U. S. App. 452] 27: 327

Authority conferred upon cities, village subsequently incorporated as city. *Id.*

Second issue after first issue absorbing entire tax.

[60 Fed. 193; 23 U. S. App. 208] 8: 554

Granted by charter not revoked by subsequent general act.

[86 Fed. 272; 57 U. S. App. 593] 30: 38

Validity of provisions of act for issuance of refunding bonds by town.

[59 Fed. 58; 19 U. S. App. 321] 7: 669

Township scaling down and refunding bonded indebtedness.

*Id.*

**For what purpose.**

To pay what judgments.

[60 Fed. 387; 23 U. S. App. 29] 9: 37

For moneys borrowed for use of city.

[60 Fed. 718; 18 U. S. App. 514] 9: 244

To refund current expense warrants.

[86 Fed. 272; 57 U. S. App. 593] 30: 38

Sufficiency of recitals as to purpose for which refunding bonds issued.

[100 Fed. 56] 40: 281

To pay or refund existing indebtedness.

[86 Fed. 272; 57 U. S. App. 593] 30: 38

Refunding bonds presumed to have been issued in exchange for valid outstanding evidence of indebtedness instead to have increased indebtedness.

[100 Fed. 337] 40: 391



**MUNICIPAL CORPORATIONS—continued.**

- To aid in building bridge over river partly outside corporate limits.  
[88 Fed. 449; 60 U. S. App. 78] 31: 586
- To pay bonds of water company secured by mortgage on its property purchased by city subject thereto.  
[98 Fed. 387] 39: 106

**Form.**

- Bonds payable to "— or order," payable to bearer. [100 Fed. 337] 40: 391
- Unsealed obligations of township denominated "bonds" on face, treated as specialties though not sealed.  
[99 Fed. 202] 39: 462
- Power to make bonds negotiable. [58 Fed. 935; 16 U. S. App. 545] 7: 574  
[60 Fed. 55; 16 U. S. App. 656, 709] 8: 455
- Negotiable, construction of statute. [57 Fed. 137; 12 U. S. App. 562] 6: 288
- Power to issue negotiable bonds payable to bearer.  
[69 Fed. 943; 32 U. S. App. 725] 16: 553
- Right to make refunding bonds negotiable. Id.

**Validity, generally; legalizing; ratification.**

- Taxpayer's right to enjoin illegal issue of, see Note, 38: 463
- Federal court following decision of state court as to validity of.  
[96 Fed. 293] 37: 493
- Noncompliance with requirement that bonds shall state to which class they  
[71 Fed. 341; 37 U. S. App. 481] 18: 61
- Validity not affected by dissolution and subsequent reincorporation with less territory.  
[91 Fed. 594; 63 U. S. App. 442] 33: 501
- Wrongful diversion of assessments applicable to, effect of.  
[71 Fed. 341; 37 U. S. App. 481] 18: 61
- Illegality of assessments for street improvements, effect on bonds issued for. Id.
- Showing class of indebtedness to which belongs.  
[58 Fed. 935; 16 U. S. App. 545] 7: 574
- Estoppel to question existence or validity of act under which issued by town.  
[96 Fed. 293] 37: 493
- Special curative act legalizing. [56 Fed. 330; 85 U. S. App. 387] 29: 214  
See also Note, 39: 182
- Town officers no power to validate bonds which town no power to issue.  
[96 Fed. 293] 37: 493

**Authorizing; elections.**

- Town bonds to fund floating debt, ordinance ordering election.  
[54 Fed. 100; 10 U. S. App. 692] 4: 212
- Failure to record or publish, validity of bond. Id.
- Failure of clerk to record proceedings relating to issuance of, not authorize municipality to defeat enforcement.  
[99 Fed. 202] 39: 462
- Submitting matter by resolution, rather than by ordinance.  
[60 Fed. 203; 19 U. S. App. 622] 8: 564
- Township voting at same time for borrowing money on bonds to build and repair bridges and to raise money therefor by tax.  
[99 Fed. 202] 39: 462
- Failure to record or publish notice of election.  
[54 Fed. 100; 10 U. S. App. 692] 4: 212
- Power of old council to direct election on question of issuing.  
[74 Fed. 535; 43 U. S. App. 369] 20: 642
- Election for issuance of, under new city charter. Id.
- County board's failure to canvass returns of election to authorize issuance by township.  
[86 Fed. 261; 57 U. S. App. 611] 30: 27
- County board not required to canvass returns or declare result of election as to issuance of township bonds. Id.
- State court holding invalid township election authorizing issuance of, not conclusive on Federal court.  
[99 Fed. 202] 39: 462

## MUNICIPAL CORPORATIONS—continued.

**Disposal of; sale.**

- Delegation by council to mayor of authority to sell.  
[75 Fed. 800; 41 U. S. App. 496] 21: 517
- Not invalid because first purchased by city treasurer.  
[71 Fed. 341; 37 U. S. App. 481] 18: 61
- Contract for sale of, validity of requirement that legality of issue shall be established to "satisfaction" of buyer's counsel.  
[81 Fed. 928; 54 U. S. App. 137] 27: 6
- Resale of, by purchaser, at less than maximum price, notice of invalidity.  
[62 Fed. 778; 27 U. S. App. 244] 10: 637

**Limitation of indebtedness as affecting.**

- Effect of recitals.  
[85 Fed. 302; 56 U. S. App. 323] 29: 214
- Debts of city board of education not city debts considered in determining whether bonds of board increase indebtedness beyond prohibited amount.  
[94 Fed. 324] 36: 278
- Provision as to limit of bonded indebtedness in municipalities not applicable to corporate school board in city. Id.
- Last complete assessment by corporate school board considered in determining power to issue bonds. Id.
- Bonds to fund existing indebtedness not create debt.  
[86 Fed. 272; 57 U. S. App. 593] 30: 38
- Judgment enforcing collection conclusive against objection based on constitutional limitation of indebtedness. [79 Fed. 507; 49 U. S. App. 216] 25: 87
- Issue of bonds in satisfaction of judgment as creating debt. Id.
- Debt of corporate school board in city not city's debt, considered in determining whether bonds of board exceed limit of indebtedness.  
[94 Fed. 324] 36: 278

**Bona fide purchasers—Who are; rights generally.**

See also *infra*, **Effect of recitals.**

- What will deprive one of character as bona fide purchaser.  
[69 Fed. 943; 32 U. S. App. 725] 16: 553
- Presumption in aid of special finding, that holder purchased with knowledge of adverse decision.  
[76 Fed. 208; 46 U. S. App. 260] 22: 128
- Purchaser not chargeable with notice of collateral attack.  
[91 Fed. 594; 63 U. S. App. 442] 33: 501
- Persons dealing with, chargeable with notice of statutory provisions for issuance.  
[74 Fed. 535; 43 U. S. App. 369] 20: 642
- When bonds antedated so as to appear to have been issued prior to repeal of statute.  
[83 Fed. 669; 48 U. S. App. 681] 27: 668
- When bonds issued without passage of a resolution contemplated by ordinance. Id.
- In case of improper application of proceeds.  
[62 Fed. 778; 27 U. S. App. 244] 10: 637
- When proceeds diverted to unlawful purpose.  
[86 Fed. 272; 57 U. S. App. 593] 30: 38
- Parol evidence to show passage of order for issuance of, after bonds issued.  
[66 Fed. 494; 30 U. S. App. 20] 13: 600
- To aid in constructing bridge over navigable river; purchaser's right to presume necessary approval obtained. [88 Fed. 449; 60 U. S. App. 78] 31: 585
- Contradicting record as to election authorizing bonds.  
[81 Fed. 329; 52 U. S. App. 214] 26: 434
- That payment deferred contrary to statute, no defense as against bona fide purchaser.  
[94 Fed. 755] 36: 471
- Assignee, as bona fide purchaser before maturity, takes same rights as latter.  
[99 Fed. 202] 39: 462

## MUNICIPAL CORPORATIONS—continued.

**—When limitation of indebtedness exceeded.**

Bonds of school district refunding bonds.

[77 Fed. 277; 40 U. S. App. 475] 23: 169

Purchase of bonds exceeding limit of authorized issue.

[54 Fed. 487; 13 U. S. App. 126] 4: 460

Excessive indebtedness not arise as against innocent purchaser from third person.

[86 Fed. 272; 57 U. S. App. 593] 30: 38

No defense that issue of refunding bonds temporarily increased city's debt beyond maximum limitation.

Effect of certificate of regularity. [85 Fed. 387; 56 U. S. App. 330] 29: 214

**Effect of recitals.**

City officers no power to make recitals in refunding bonds estopping city to prove their invalidity from public records.

[98 Fed. 387] 39: 106

Full effect given recitals, where township board directs execution and signing by appropriate officers.

[99 Fed. 202] 39: 462

Estoppel only as to matters of fact not of public record.

[57 Fed. 137; 12 U. S. App. 562] 6: 288

As to power to issue.

Id.

As to date of issue.

[100 Fed. 56] 40: 281

Showing absolute invalidity.

[74 Fed. 535; 43 U. S. App. 369] 20: 642

Of legal issuance where ordinance required was not adopted.

[69 Fed. 768; 32 U. S. App. 640] 16: 395

Township estopped to deny recital as to regularity of issue.

[86 Fed. 261; 57 U. S. App. 611] 30: 27

[87 Fed. 304; 59 U. S. App. 21] 30: 657

Estops to set up fraudulent conduct of officials.

[64 Fed. 453; 22 U. S. App. 635] 12: 218

When issued by body without authority.

[62 Fed. 778; 27 U. S. App. 244] 10: 637

When issue exceeds statutory limit.

[85 Fed. 387; 56 U. S. App. 330] 29: 214

Estoppel to deny authority to issue, by recital in that "authorized by" specified act.

[88 Fed. 449; 60 U. S. App. 78] 31: 585

Estop city as against bona fide purchaser to assert improper issuance.

[73 Fed. 966; 34 U. S. App. 719] 20: 142

Of issuance for lawful purpose, estoppel of city to deny.

[86 Fed. 272; 57 U. S. App. 593] 30: 38

Township estopped by, from asserting irregularities in election or defects in preliminary proceedings.

[99 Fed. 202] 39: 462

That bonds issued under ordinance; effect, as estoppel, to question validity of ordinance.

[54 Fed. 100; 10 U. S. App. 692] 4: 212

That bonds are refunding bonds; estoppel to deny validity of old bonds.

[58 Fed. 935; 16 U. S. App. 545] 7: 574

That bonds issued to refund certain outstanding legal obligations.

[98 Fed. 804] 39: 301

As to compliance with requirements, constitutional requisite.

[62 Fed. 778; 27 U. S. App. 244] 10: 637

Putting purchaser on inquiry as to performance of prerequisite conditions.

[73 Fed. 966; 34 U. S. App. 719] 20: 142

As to compliance with requirements of act authorizing issue.

[57 Fed. 149; 12 U. S. App. 551] 6: 296

Of issuance in conformity with statute authorizing issue.

[97 Fed. 145] 38: 84

Estoppel as against bona fide holder by recital of issuance in conformity with statute.

[100 Fed. 56] 40: 281

As to act authorizing issuance and performance of preliminary steps.

[51 Fed. 362; 4 U. S. App. 622] 2: 272

**MUNICIPAL CORPORATIONS—continued.**

- Showing compliance with conditions, effect of, as against bona fide purchaser.  
[69 Fed. 58; 30 U. S. App. 295] 16: 125
- As to preliminary proceeding. [62 Fed. 778; 27 U. S. App. 244] 10: 637
- Charging purchaser with notice of issuance under invalid act.  
[73 Fed. 966; 34 U. S. App. 719] 20: 142
- Putting purchaser on inquiry as to terms of resolution recited. Id.
- Putting purchaser on inquiry as to terms of ordinance recited. Id.
- General recital that all requirements of law complied with, where each bond shows limitation of debt exceeded. [97 Fed. 732] 38: 392

**XI. LIABILITY FOR TORTS.**

See also HIGHWAYS.

- Liability for torts of public officers, see Note, 14: 534
- Liability for polluting streams, see Note, 37: 539
- Governmental or corporate capacity, closing circus.  
[57 Fed. 905; 12 U. S. App. 640] 6: 627
- Wrongful act of mayor and police in closing exhibition. Id.
- Negligence in towing vessel. [62 Fed. 617; 17 U. S. App. 642] 10: 552
- For injuries from defects in electric-light poles.  
[88 Fed. 226; 60 U. S. App. 104] 31: 499
- For negligence of members of fire department.  
[67 Fed. 347; 35 U. S. App. 201] 14: 530
- Death caused by mob. [62 Fed. 240; 23 U. S. App. 533; 26 L. R. A. 329] 10: 361

**MUTUAL BENEFIT INSURANCE.**

See INSURANCE.

**MUTUALITY.**

In Contracts, see CONTRACTS.

**NAME.**

- Use of Firm Name by Purchaser of Goodwill, see GOODWILL.
- Use of Tradename, see TRADEMARKS AND TRADENAMES.
- See also MISNOMER.

Of parties, in deeds and mortgages, see Note, 23: 146

**NATIONAL BANKS.**

See BANKS AND BANKING.

**NATURALIZATION.**

See ALIENS.

**NAVIGABLE WATERS.**

See also PILOTS; WATERS AND WATERCOURSES.

- Federal control of, under power to regulate interstate commerce.  
[92 Fed. 344] 34: 392
- Of United States, state's authority to close. Id.
- Rights of sovereignty of states bordering on Lake Michigan.  
[70 Fed. 113; 34 U. S. App. 261; 30 L. R. A. 336] 17: 1
- State sovereignty extends to middle of Lake Michigan. Id.
- Lake Michigan not a "high sea." Id.
- Closing outlet of Mississippi river resulting from break after long open.  
[92 Fed. 344] 34: 392
- Dismissal of libel for injury to vessel by draw bridge, where fault not located.  
[97 Fed. 107] 38: 70
- Failure to lock draw bridge at both ends while vessel passing. Id.

**NAVIGABLE WATERS—continued.**

Libel for death caused by collision on.

[61 Fed. 364; 20 U. S. App. 570] 9: 521

State statutes as to death by negligence operative on sea within 3 miles from shore. [73 Fed. 239; 44 U. S. App. 434; 46 L. R. A. 264] 19: 481

Law governing, in case of death by negligence on waters within state jurisdiction. [70 Fed. 113; 34 U. S. App. 261] 17: 1

Route of channel which dock company authorized to construct "across, along, through, or upon" specified waters. [87 Fed. 512; 59 U. S. App. 155] 31: 99

**What waters navigable.**

Test of navigability. [57 Fed. 803; 16 U. S. App. 152] 6: 585

Instruction as to meaning of. [92 Fed. 344] 34: 392

Whether stream navigable question for jury. Id.

Large bay covered with water from 6 inches to 3 feet deep. [90 Fed. 680; 62 U. S. App. 644] 33: 233

Pursuit of wild fowl by flat-bottomed boats, not make waters navigable. Id.

Must be capable of navigation in fact for transportation of commerce. Id.

**Riparian rights, generally.**

Settling rights in, as they exist when decree rendered. [91 Fed. 955] 34: 138

When right to erect wharves to point of navigability exhausted. Id.

Riparian owner's right to project piers into. Id.

Ordering abatement of pier to protect state's bare legal title to submerged lands. Id.

**Title to land under.**

Within boundaries of state. [57 Fed. 803; 16 U. S. App. 152] 6: 585

Subject to power of Congress to regulate interstate commerce. Id.

Within boundaries of state, effect of United States patent. Id.

**Boundaries.**

Fixing boundary line touching cove whose limits disputed. [94 Fed. 738] 37: 387

Boundary of government grants bordering on navigable waters. [85 Fed. 45; 54 U. S. App. 668] 29: 5

When marsh land not part of the navigable waters. Id.

Estoppel to deny that line of marsh is proper one for boundary. Id.

When state law carries title to thread of stream. [57 Fed. 803; 16 U. S. App. 152] 6: 585

**Obstructions in.**

Within state, Federal jurisdiction. [81 Fed. 658; 48 U. S. App. 443] 26: 547

Enjoining obstruction of, though act penal. [88 Fed. 664; 59 U. S. App. 377] 32: 84

By hydraulic mining, power of Congress to forbid. Id.

Burden of proof as to, submarine cable. [59 Fed. 365; 20 U. S. App. 247] 8: 152

Question whether log boom conforms to state statute not a Federal one. [81 Fed. 658; 48 U. S. App. 443] 26: 547

Booms, etc., not inhibited by appropriations for improvement of river. Id.

Right to continue log boom after statute prohibiting obstruction. Id.

Right to presume that necessary approval obtained for constructing bridge across. [88 Fed. 449; 60 U. S. App. 78] 31: 585

By railroad drawbridge, duty, liability. [59 Fed. 192; 20 U. S. App. 136] 8: 86

Railroad bridge obstructing navigation a nuisance. [74 Fed. 408; 40 U. S. App. 13] 20: 481

Instruction favorable to railroad company in action for obstructing by bridge. Id.

Delaying vessel while repairing broken drawbridge. [91 Fed. 998; 63 U. S. App. 286] 34: 159

**NAVIGABLE WATERS—continued.**

Compelling removal of scuttled vessel as obstruction.  
[63 Fed. 472; 21 U. S. App. 402, 426] 11: 294

Removing piles around piers to ward off vessels from obstructions.  
[63 Fed. 626; 24 U. S. App. 49] 11: 366

**NAVIGATION.**

Rules of, see **COLLISION**.

**NEGLIGENCE.**

Of Bank in Making Collection, see **BANKS**.

Liability of Director for, see **BANKS**; **CORPORATIONS**.

Of Carrier, see **CARRIERS**.

Of Fellow Servant, see **MASTER AND SERVANT**.

Of Master or Servant, see **MASTER AND SERVANT**.

Of Municipal Corporation, see **MUNICIPAL CORPORATIONS**.

Of Railroad Company, see **RAILROADS**.

Of Ship, see **COLLISION**; **SHIPPING**.

Of Telegraph Company, see **TELEGRAPHS AND TELEPHONES**.

Of Telephone Company, see **TELEGRAPHS AND TELEPHONES**.

Of Tugs, see **COLLISION**; **TOWAGE**.

As to Elevators, see **ELEVATORS**.

Of Vice Principal, see **MASTER AND SERVANT**.

Of Wharfinger, see **WHARVES**.

Of Street Railroad Company, see **STREET RAILROADS**.

Estoppel by, see **ESTOPPEL**.

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Of Pilot, see **PILOT**.

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In Respect to Use of Electricity, see **ELECTRICITY**.

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Causing Death, see **DEATH**.

As to Fires, see **FIRES**; **RAILROADS**.

**Of person causing injury—In general.**

Liability of corporation for, see **Note, 39: 15**

Of agent in failing to collect rents. [48 Fed. 780; 2 U. S. App. 40] 1: 93

Duty of owner as to persons coming on premises solely for own purposes.

[88 Fed. 860; 50 U. S. App. 419] 32: 126

Leaving cellar door open at night in building in which shippers required to go with stock. [97 Fed. 881] 38: 526

Owner of smoke stack in process of erection making opening in floor laid to protect workmen below, while work going on above. [99 Fed. 214] 39: 474

Navigation company liable for injury from blasting by contractors owning wharf where injury occurs. [100 Fed. 244] 40: 366

Provision that Columbian Exposition Company not responsible to exhibitors for losses of any kind, valid. [96 Fed. 687] 38: 483

Duty to exercise diligence to keep lanterns on fishtrap burning. [66 Fed. 910; 29 U. S. App. 554] 14: 478

Pure accident, contributing with negligence to cause injury; effect on liability. [82 Fed. 979; 42 U. S. App. 567] 27: 287

Of servants of one contracting to use canal boat with hirer of boat, liability for. [91 Fed. 539; 63 U. S. App. 79] 33: 662

Liability of bailee for. [49 Fed. 954; 1 U. S. App. 80] 1: 481

Maker and seller of article not liable to third person for injuries resulting from defects in material or construction.

[87 Fed. 109; 58 U. S. App. 91] 30: 567

Care required from motormen and street-car drivers towards children, see **Note, 40: 362**

General allegation of, without stating facts.

[49 Fed. 347; 4 U. S. App. 121] 1: 286

C. C. A.—33.

**NEGLIGENCE—continued.****—What constitutes.**

- Running elevator after being warned to stop it.  
[68 Fed. 858; 30 U. S. App. 379] 16: 36
- Placing obstructions in hall of building.  
[63 Fed. 942; 24 U. S. App. 176] 11: 521
- Allowing crippled steer to roam around railroad yards.  
[71 Fed. 939; 30 U. S. App. 541] 18: 394
- Removing piles driven around drawbridge piers to ward off vessels.  
[63 Fed. 626; 24 U. S. App. 49] 11: 366
- Giving way, in storm, of posts to which vessels moored.  
[93 Fed. 574; 63 U. S. App. 652] 35: 454
- Leaving lighter without a watchman. [57 Fed. 311; 14 U. S. App. 496] 6: 346

**—Evidence.**

- Burden of showing that injury resulted from.  
[76 Fed. 127; 46 U. S. App. 214] 22: 101
- Necessity to show that any given rate of speed of logging train, derailed, dangerous.  
[72 Fed. 739; 44 U. S. App. 347] 19: 168
- Evidence of prior acts of negligence. [75 Fed. 953; 33 U. S. App. 567] 21: 575
- Evidence of notice to defendant, before injury of dangers and unsafe practices.  
[79 Fed. 896; 51 U. S. App. 81] 25: 216
- Repairing machinery after accident as evidence of.  
[55 Fed. 595; 12 U. S. App. 132] 5: 220
- Evidence as to care in maintaining light on fishtrap, in action for drowning for failure to maintain.  
[66 Fed. 910; 29 U. S. App. 554] 14: 178

**—Instructions.**

- Instructions on questions of negligence held unobjectionable.  
[79 Fed. 268; 48 U. S. App. 298] 24: 570
- Instruction that burden of entire case was on plaintiff, when harmless.  
[82 Fed. 869; 50 U. S. App. 249] 27: 264
- Failure of instruction to explain which allegations of negligence must be established.  
[76 Fed. 443; 46 U. S. App. 226] 22: 268
- Instruction as to defendant's duty to avoid consequence of plaintiff's negligence.  
[76 Fed. 127; 46 U. S. App. 214] 22: 101
- Instruction as to presence of slippery substance on wharf.  
[74 Fed. 503; 41 U. S. App. 109] 20: 625

**—Questions for court or jury.**

See also TRIAL.

- Preliminary question for court whether jury can justifiably infer negligence.  
[82 Fed. 979; 42 U. S. App. 567] 27: 287
- When question one of law for court. [79 Fed. 744; 49 U. S. App. 260] 25: 190
- Question of, for court, when facts undisputed and admit of but one reasonable inference.  
[82 Fed. 979; 42 U. S. App. 567] 27: 287
- Directing verdict where inferences from circumstances shown exclusively for jury.  
[66 Fed. 922; 21 U. S. App. 682] 14: 190

**Contributory negligence—In general.**

- Assumption of risk by person voluntarily going on premises on which blasting done.  
[100 Fed. 244] 40: 366
- Obviating as bar, Federal court applying state statute.  
[61 Fed. 505; 22 U. S. App. 220; 24 L. R. A. 693] 9: 666
- Negligence not contributing to accident no defense.  
[68 Fed. 148; 32 U. S. App. 253] 15: 327
- Concurring with other party's negligence.  
[57 Fed. 921; 12 U. S. App. 601] 6: 641

**NEGLIGENCE—continued.**

Not defeat action if consequences avoidable with reasonable care.	
[62 Fed. 552; 23 U. S. App. 443]	11: 202
[88 Fed. 116; 60 U. S. App. 156]	31: 414
Effect of, when other's negligence the more proximate cause.	
[79 Fed. 744; 49 U. S. App. 260]	25: 190
No recovery in case of concurrent negligence of both parties.	
[97 Fed. 747]	38: 408
Concurring with third person's negligence.	
[63 Fed. 394; 27 U. S. App. 310]	11: 251
Of fellow servant, no defense to one not master of either.	
[68 Fed. 148; 32 U. S. App. 253]	15: 327
Right to damages for injury reduced, not barred by.	
[88 Fed. 455; 60 U. S. App. 140]	32: 1
Question for jury where dispute as to whether warning given in time to escape injury.	
[97 Fed. 882]	38: 528
Duty to direct verdict when established by undisputed facts.	
[57 Fed. 921; 12 U. S. App. 601]	6: 641
[89 Fed. 646; 60 U. S. App. 716]	32: 282

**—What constitutes, generally.**

Unnecessarily walking in dangerous place.	
[85 Fed. 611; 52 U. S. App. 566]	29: 377
Voluntarily placing one's self in dangerous position.	
[69 Fed. 525; 32 U. S. App. 621]	16: 300
In passing through unlighted hall.	[63 Fed. 942; 24 U. S. App. 176] 11: 521
Shipper arriving with stock at night falling through open door into cellar.	
[97 Fed. 881]	38: 526
Holding train at point where two railways cross.	
[60 Fed. 993; 22 U. S. App. 102]	9: 314
Tug continuing attempt to reach schooner after way obstructed by other tug.	
[66 Fed. 362; 31 U. S. App. 317]	13: 512
Living near powder magazine.	[58 Fed. 152; 12 U. S. App. 665] 7: 130
[58 Fed. 158; 12 U. S. App. 675]	7: 136
Going to sleep on boat near point where blasting going on.	
[100 Fed. 244]	40: 366
Purchaser's acquiescence as to manner of installing range.	
[80 Fed. 474; 42 U. S. App. 449]	25: 570
In failing to keep drainage ditch open.	
[64 Fed. 679; 28 U. S. App. 134; 27 L. R. A. 131]	12: 384

**—Of, or in regard to, children.**

Injury to inexperienced or youthful employee, see	Note, 38: 318
Of father in leaving two-year-old child with older children.	
[94 Fed. 321]	36: 361
Parents' negligence imputed to child.	[92 Fed. 310] 34: 1
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Nine-year-old boy jumping on moving train.	
[74 Fed. 350; 43 U. S. App. 278]	20: 436
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**Imputed.**

Wife's imputed to husband.	
[63 Fed. 39; 27 U. S. App. 196; 26 L. R. A. 42]	12: 190
Of wife—liability of husband, see	Note, 12: 196
Imputed, driver and guest.	
[51 Fed. 174; 4 U. S. App. 542; 16 L. R. A. 800]	2: 149



**NEGLIGENCE**—continued.

- Negligence of owner and driver of vehicle not imputable to guest.  
     [79 Fed. 744; 49 U. S. App. 260] 25: 190
- Of parents to child. [92 Fed. 310] 34: 1
- Imputed to infant, see Note, 34: 4
- Of fireman to engineer. [68 Fed. 148; 32 U. S. App. 253] 15: 327
- Of tug to passenger drowned. [73 Fed. 883; 43 U. S. App. 190] 20: 86

**—Evidence.**

- Burden of proving. [76 Fed. 127; 46 U. S. App. 214] 22: 101
- Burden as to, allegation of due care.  
     [85 Fed. 945; 50 U. S. App. 297] 29: 500
- Burden as to, how discharged. [61 Fed. 573; 15 U. S. App. 400] 9: 629
- How burden of proving discharged. [54 Fed. 301; 6 U. S. App. 381] 4: 346
- Must be shown by preponderance. [49 Fed. 801; 4 U. S. App. 264] 1: 435  
     [97 Fed. 423] 38: 239
- Conflicting inferences as to. [60 Fed. 993; 22 U. S. App. 102] 9: 314

**—Instructions.**

- Instruction defining. [74 Fed. 503; 41 U. S. App. 109] 20: 625
- Unobjectionable instruction on question of.  
     [79 Fed. 268; 48 U. S. App. 298] 24: 570
- Based on incomplete statement of facts properly refused.  
     [93 Fed. 737] 35: 562
- Referring to possible bearing of sex upon question of.  
     [79 Fed. 291; 49 U. S. App. 81] 24: 592

**Proximate cause.**

- Failure to show that negligence was.  
     [55 Fed. 949; 12 U. S. App. 381; 20 L. R. A. 582] 5: 347
- Primary moving cause without which injury would not have occurred.  
     [97 Fed. 423] 38: 239
- Natural and probable cause.  
     [55 Fed. 949; 12 U. S. App. 381; 20 L. R. A. 582] 5: 347
- Question of proximate cause of injury for jury. [100 Fed. 359] 40: 402
- Question whether negligence proximate cause of injury not question for jury.  
     [81 Fed. 679; 53 U. S. App. 381] 27: 367
- Fall, not development of microbes, cause of injuries.  
     [63 Fed. 942; 24 U. S. App. 176] 11: 521
- Injuries not reasonably anticipated, not actionable.  
     [69 Fed. 525; 32 U. S. App. 621] 16: 300  
     [74 Fed. 155; 36 U. S. App. 682] 20: 366
- Injury that could not reasonably have been foreseen or anticipated.  
     [55 Fed. 949; 12 U. S. App. 381; 20 L. R. A. 582] 5: 347
- Not natural consequence, interposition of independent cause. Id.
- Injury resulting from many fortuitous circumstances. Id.
- Misapprehension of workman's signal cause of injury by car.  
     [88 Fed. 860; 50 U. S. App. 419] 32: 126
- Conductor's or engineer's negligence.  
     [56 Fed. 988; 12 U. S. App. 541] 6: 205
- Statement of conductor to stockman proximate cause of injury.  
     [55 Fed. 949; 12 U. S. App. 381; 20 L. R. A. 582] 5: 347
- Telegraph pole cause of injury, from slipping in stepping over it.  
     [73 Fed. 609; 43 U. S. App. 141] 19: 605
- Tug backing into other tug's way cause of latter's grounding.  
     [66 Fed. 362; 31 U. S. App. 317] 13: 512
- Shipping petroleum in car without valve regulating outflow, as proximate cause of explosion. [63 Fed. 400; 24 U. S. App. 7; 27 L. R. A. 583] 11: 253

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Object and scope of neutrality law, see Note, 28: 662

What justifies collector of customs in refusing clearance to vessel.

[67 Fed. 351; 35 U. S. App. 127] 14: 659

Forfeiture of vessel for violation of. [89 Fed. 207; 59 U. S. App. 96] 32: 191

Libel of forfeiture against vessel for violating, sufficiency of.

[85 Fed. 424; 52 U. S. App. 571] 29: 244

Forfeiture of vessel, arms not fittings of vessel herself.

[56 Fed. 505; 15 U. S. App. 1] 5: 608

Vessel employed by insurgents without belligerent rights.

Id.

American vessel not subject to forfeiture because of intent to employ same in violation of, formed while on high seas. [98 Fed. 983] 39: 374

Providing means for transporting military expedition.

[84 Fed. 799; 55 U. S. App. 479] 28: 612

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Id.

**NEWS ASSOCIATIONS.**See **PRESS ASSOCIATION.****NEW TRIAL.**Review of Decision on Motion, see **APPEAL AND ERROR.**Effect of Motion on Time for Taking Appeal, see **APPEAL AND ERROR.**

When granted in Federal courts, see

Notes, 5: 594; 27: 393

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[65 Fed. 742; 31 U. S. App. 30] 13: 101

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[49 Fed. 206; 4 U. S. App. 202] 1: 229

[57 Fed. 531; 18 U. S. App. 288] 6: 471

Granting or refusal of, a matter of discretion.

[65 Fed. 742; 31 U. S. App. 30] 13: 101

[67 Fed. 522; 32 U. S. App. 182; 28 L. R. A. 749] 14: 506

[67 Fed. 945; 32 U. S. App. 405] 15: 93

[74 Fed. 205; 34 U. S. App. 655] 20: 400

[86 Fed. 872; 58 U. S. App. 665] 30: 445

Refusal of motion for new trial in case tried without jury discretionary.

[86 Fed. 244; 58 U. S. App. 550] 30: 10

In equity, after denial in action at law.

[70 Fed. 12; 36 U. S. App. 75] 16: 593

Party asking must procure notes of proceedings and evidence.

[72 Fed. 121; 25 U. S. App. 642] 18: 467

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[50 Fed. 689; 4 U. S. App. 324] 1: 616

Remanding for, on appeal in admiralty.

[54 Fed. 188; 7 U. S. App. 660] 4: 273

**NEW TRIAL**—continued.

Required, when judgment on agreed facts reversed and remanded because facts evidential only. [88 Fed. 627; 60 U. S. App. 225] 32: 64

Stipulation for waiver of jury on first trial not operate on new trial, after reversal. Id.

**As of right.**

Statute allowing one, instead of two, retrospective legislation.

[83 Fed. 643; 55 U. S. App. 150] 27: 646

In ejectment after new trial for cause.

[61 Fed. 932; 27 U. S. App. 65] 10: 172

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[58 Fed. 140; 9 U. S. App. 681] 7: 111

New trial in ejectment, as matter of right, abrogating, as to pending suits.

[83 Fed. 643; 55 U. S. App. 150] 27: 646

In ejectment, time of application for.

[56 Fed. 956; 12 U. S. App. 497] 6: 180

[56 Fed. 959; 12 U. S. App. 502] 6: 183

**Grounds.**

Evidence insufficient to support verdict.

[54 Fed. 468; 7 U. S. App. 626] 4: 441

Discretionary power to set aside verdict as against weight of evidence.

[78 Fed. 576; 47 U. S. App. 402] 24: 321

Disregarding instruction, when shown.

[49 Fed. 696; 7 U. S. App. 84] 1: 416

**Conditions.**

Delay in paying costs, when does not prevent.

[69 Fed. 785; 32 U. S. App. 676] 16: 413

Payment of costs of previous new trial, as condition of granting.

Id.

Refusal to impose conditions in order for, when directed by mandate on appeal.

[89 Fed. 903; 61 U. S. App. 499] 32: 402

**NEXT FRIEND.**

Of insane petitioner for habeas corpus may appeal from judgment.

[64 Fed. 325; 21 U. S. App. 407] 12: 139

Of insane person superseded by guardian *ad litem*.

[64 Fed. 331; 21 U. S. App. 481; 26 L. R. A. 784] 12: 145

Special guardian for sale of infant's land, not.

[78 Fed. 399; 45 U. S. App. 409] 24: 145

**NOMINAL DAMAGES.**

See DAMAGES.

**NON COMPOS MENTIS.**

See INCOMPETENT PERSONS; INSANITY.

**NONMAILABLE MATTER.**

See POST OFFICE.

**NONRESIDENT.**

Money and credits of, invested by resident agent, taxable.

[88 Fed. 578; 60 U. S. App. 124] 31: 462

Taxation of property, see

Note, 31: 467

Escheat of land owned by.

[90 Fed. 72; 59 U. S. App. 457] 32: 522

Effect of subsequent withdrawal of appearance by.

[69 Fed. 451; 37 U. S. App. 365] 16: 296

Set off against, in Federal court.

[73 Fed. 980; 34 U. S. App. 705] 20: 157

**NONSUIT.**

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**NONUSER.**

- Abandonment of irrigation ditch by.  
     [64 Fed. 510; 29 U. S. App. 155; 30 L. R. A. 265] 12: 250  
 Not divest public of right to open and use street dedicated.  
     [90 Fed. 691; 61 U. S. App. 224] 33: 237

**NOTARY.**

- Protest of note by notary, who is officer of bank.  
     [69 Fed. 798; 32 U. S. App. 554] 16: 425  
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     [100 Fed. 600] 40: 581

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**NOTICE.**

- Of Adverse Holding, see **ADVERSE POSSESSION.**  
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 Of Mechanics' Liens, see **MECHANICS' LIENS.**  
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 To Owner of Land Sold for Taxes before Obtaining Deed, see **TAXATION.**  
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 From Record of Deed, Mortgage, or Other Instrument, see **RECORDS.**
- Sufficient to call for inquiry, sufficient as to everything which inquiry would have disclosed. [79 Fed. 709; 49 U. S. App. 181] 25: 154
- Facts putting purchaser on inquiry as to assignment for creditors.  
     [61 Fed. 874; 27 U. S. App. 49] 10: 135
- Of bank, that stock transferred. [73 Fed. 136; 41 U. S. App. 95] 19: 406
- Contract with himself, by agent, for principal, notice that without scope of general powers.  
     [86 Fed. 742; 58 U. S. App. 674] 30: 409
- Bank chargeable with notice of depositor's agent's want of authority as to transferring money from account. [95 Fed. 87] 36: 659
- Seller chargeable with notice that guaranty of national bank presented by buyer, *ultra vires*. [82 Fed. 799; 49 U. S. App. 596] 27: 171
- To payees of drafts drawn by bank president for personal use, of lack of authority. [94 Fed. 30; 45 L. R. A. 822] 36: 56
- To bank, from possession of books containing entries of drafts fraudulently drawn by president. Id.
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     [99 Fed. 18] 40: 47
- To assignee of patent, of defect in title.  
     [72 Fed. 496; 37 U. S. App. 664] 19: 130
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     [49 Fed. 63; 7 U. S. App. 73] 1: 169
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**NOTICE—continued.**

Of unrecorded chattel mortgage on vessel, what constitutes.

[53 Fed. 927; 9 U. S. App. 370] 4:111

Imparted by record of chattel mortgage securing negotiable notes.

[59 Fed. 182; 16 U. S. App. 334] 8:78

By mortgage securing corporate bonds, effect on purchaser of bonds.

[90 Fed. 348; 62 U. S. App. 141] 33:95

Purchaser of county bonds charged with notice of contents of public records furnished as test of compliance with limitation.

[97 Fed. 270] 38:167

Of cancelation of insurance policy.

[55 Fed. 455; 3 U. S. App. 582] 5:200

[60 Fed. 690; 20 U. S. App. 410] 9:215

Failure of assignee of insurance policy to give notice to third persons.

[58 Fed. 633; 19 U. S. App. 256] 7:391

To guardian of drunkard, of application for restoration to rights.

[92 Fed. 811] 34:254

That vessel chartered when supplyman charged with.

[54 Fed. 396; 6 U. S. App. 389] 4:385

To clerk, of prohibition against exporting goods.

[57 Fed. 524; 14 U. S. App. 569] 6:466

**Imputed—In general.**

Of one partner to firm.

[72 Fed. 949; 38 U. S. App. 362] 19:256

Of outstanding judgment against decedent's estate imputed to purchaser of land.

[91 Fed. 13; 62 U. S. App. 582] 33:307

**—Corporate officers.**

Imputing to bank, notice to officers.

[84 Fed. 119; 55 U. S. App. 570] 28:297

To president, chargeable to bank.

[72 Fed. 129; 37 U. S. App. 642] 18:475

When notice to president imputed to bank.

[75 Fed. 433; 43 U. S. App. 550] 22:373

Knowledge of president, as constructive notice to bank.

[57 Fed. 20; 13 U. S. App. 300] 6:237

Bank president's knowledge of cashier's dishonesty not imputed to bank.

[72 Fed. 470; 38 U. S. App. 254] 18:644

Bank president's knowledge of own misappropriations, to bank.

[94 Fed. 30; 45 L. R. A. 822] 36:56

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[80 Fed. 596; 47 U. S. App. 637] 26:16

Notice to bookkeeper as notice to bank.

[56 Fed. 967; 16 U. S. App. 1] 6:183

Of bank cashier, to bank.

[92 Fed. 274; 63 U. S. App. 173] 34:338

[94 Fed. 582] 36:402

Notice to bank director of vendor's lien.

[57 Fed. 20; 13 U. S. App. 300] 6:237

To treasurer, of pledge by president of his stock, notice to corporation.

[68 Fed. 76; 37 U. S. App. 86] 15:264

To corporation, implied from notice to owners of entire capital stock.

[53 Fed. 19; 3 U. S. App. 264] 3:399

Of corporate employee, as to defect in electric-light pole, to corporation.

[88 Fed. 226; 60 U. S. App. 104] 31:499

Common officers of two corporations.

[52 Fed. 379; 8 U. S. App. 99] 3:149

**—Of agents.**

Imputing agent's notice to principal.

[54 Fed. 396; 6 U. S. App. 389] 4:385

[83 Fed. 437; 55 U. S. App. 113] 28:358

Agent's knowledge of fraud imputed to principal.

[54 Fed. 23; 6 U. S. App. 510] 4:162

Imputing to principal notice to agent that vessel chartered.

[54 Fed. 396; 6 U. S. App. 389] 4:385

**NOTICE—continued.**

- To person employed to procure guaranty, binding on principal.  
[93 Fed. 171] 35: 256
- Of agent to principal, although agent acts for other party.  
[94 Fed. 258] 36: 229
- Insurance agent's knowledge acquired as attorney for insured.  
[71 Fed. 473; 34 U. S. App. 397] 18: 203
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[92 Fed. 127] 34: 240
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[77 Fed. 787; 41 U. S. App. 766] 23: 459

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[80 Fed. 433; 49 U. S. App. 320] 25: 531

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[55 Fed. 443; 3 U. S. App. 592] 5: 183

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[85 Fed. 55; 56 U. S. App. 363] 29: 14

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[52 Fed. 945; 7 U. S. App. 409] 3: 368

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[49 Fed. 807; 4 U. S. App. 247] 1: 441

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[86 Fed. 608; 58 U. S. App. 490; 41 L. R. A. 162] 30: 386

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[87 Fed. 51; 57 U. S. App. 730] 30: 520

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[85 Fed. 662; 50 U. S. App. 314] 29: 386

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[63 Fed. 466; 24 U. S. App. 113] 11: 288

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[77 Fed. 117; 40 U. S. App. 710] 23: 65

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[78 Fed. 664; 47 U. S. App. 422; 36 L. R. A. 826] 24: 271

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[52 Fed. 371; 10 U. S. App. 339] 3: 129

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[74 Fed. 52; 36 U. S. App. 720] 20: 291

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[56 Fed. 141; 1 U. S. App. 270] 4: 8

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[66 Fed. 35; 27 U. S. App. 643] 13: 315

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[75 Fed. 47; 44 U. S. App. 574] 21: 212

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[61 Fed. 865; 22 U. S. App. 393] 10: 129

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[64 Fed. 468; 29 U. S. App. 103] 12: 231

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[85 Fed. 71; 56 U. S. App. 388] 29: 30

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[79 Fed. 705; 49 U. S. App. 153] 25: 150

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[67 Fed. 948; 32 U. S. App. 272] 15: 96

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[51 Fed. 479; 10 U. S. App. 78] 2: 327

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[75 Fed. 433; 43 U. S. App. 550] 22: 378

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[53 Fed. 19; 3 U. S. App. 264] 3: 399

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[68 Fed. 618; 30 U. S. App. 393] 15: 604

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[51 Fed. 338; 10 U. S. App. 1] 2: 252

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[73 Fed. 900; 36 U. S. App. 586] 20: 103

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[60 Fed. 311; 19 U. S. App. 630] 8: 629

[65 Fed. 393; 22 U. S. App. 715] 12: 661

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[70 Fed. 561; 37 U. S. App. 436] 17: 217

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[65 Fed. 742; 31 U. S. App. 30] 13: 101

[70 Fed. 561; 37 U. S. App. 436] 17: 217

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[90 Fed. 72; 59 U. S. App. 457] 32: 522

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[65 Fed. 742; 31 U. S. App. 30] 13: 101

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[53 Fed. 86; 6 U. S. App. 348] 3: 443

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[60 Fed. 311; 19 U. S. App. 630] 8: 629

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[72 Fed. 103; 25 U. S. App. 692] 18: 462

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[90 Fed. 72; 59 U. S. App. 457] 32: 522

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[72 Fed. 96; 25 U. S. App. 679] 18: 444

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[63 Fed. 865; 27 U. S. App. 417] 11: 463

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[70 Fed. 529; 37 U. S. App. 1, 199] 17: 251

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[50 Fed. 898; 4 U. S. App. 399] 2: 76

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[80 Fed. 596; 47 U. S. App. 637] 26: 16

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[50 Fed. 684; 4 U. S. App. 288] 1: 611

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[93 Fed. 80] 35: 213

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[51 Fed. 798; 5 U. S. App. 137] 2: 510

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[54 Fed. 439; 12 U. S. App. 193] 4: 425

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[92 Fed. 445; 63 U. S. App. 773] 34: 448

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[81 Fed. 682; 53 U. S. App. 377] 26: 568

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[73 Fed. 81; 38 U. S. App. 583] 19: 264

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[57 Fed. 257; 18 U. S. App. 27] 6: 326

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[53 Fed. 86; 6 U. S. App. 348] 3: 443
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- Notwithstanding alleged anticipating devices, not obviously similar. [69 Fed. 958; 28 U. S. App. 525] 16: 569
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- Conversion of plate yielding bodily to effect a tripping, into plate having yielding lugs performing same functions. [81 Fed. 865; 55 U. S. App. 27] 26: 654

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- Removal of surplus material or needless parts. [71 Fed. 416; 34 U. S. App. 508] 18: 162
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- Transferring devices in one article to another. [68 Fed. 494; 37 U. S. App. 171] 15: 525
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[53 Fed. 367; 3 U. S. App. 340] 3: 559

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[70 Fed. 58; 28 U. S. App. 470] 16: 632

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[87 Fed. 885; 57 U. S. App. 310] 31: 265

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[99 Fed. 286] 39: 528

Must produce different force, effect, or result from that given by separate parts.

[88 Fed. 645; 59 U. S. App. 721] 32: 80

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[64 Fed. 789; 26 U. S. App. 388] 12: 418

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[83 Fed. 700; 42 U. S. App. 617] 28: 18

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[64 Fed. 384; 22 U. S. App. 601] 12: 174

Increasing effectiveness of mechanism, though elements old, and no original result accomplished.

[77 Fed. 621; 47 U. S. App. 189] 23: 357

Immediate mechanical result of combination considered in determining patentability.

[71 Fed. 411; 34 U. S. App. 498] 18: 157

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[70 Fed. 66; 33 U. S. App. 306] 16: 639

Bringing together and adapting parts necessary to form new tool.

[71 Fed. 523; 38 U. S. App. 129] 18: 235

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[75 Fed. 670; 33 U. S. App. 581] 21: 491

Effect of fact that same results may have been produced by other combinations.

[84 Fed. 171; 55 U. S. App. 534] 28: 308

Connecting two old devices so as to operate simultaneously, without change of operation and function of either.

[77 Fed. 465; 43 U. S. App. 798] 23: 242

Bringing together old devices or elements without producing anything new in function, result, or mode of operation.

[80 Fed. 528; 53 U. S. App. 66] 25: 613

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[94 Fed. 155] 36: 125

Doctrine of aggregation applies to article of manufacture, as well as to machine.

[89 Fed. 308; 60 U. S. App. 572] 32: 216

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[89 Fed. 297; 60 U. S. App. 338] 32: 205

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[97 Fed. 91] 38: 60

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[70 Fed. 716; 44 U. S. App. 106] 17: 356

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[97 Fed. 625] 38: 345

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[98 Fed. 617] 39: 189

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[97 Fed. 99] 38: 65

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[79 Fed. 993; 26 U. S. App. 781] 25: 676

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[69 Fed. 148; 29 U. S. App. 715] 16: 185

[69 Fed. 405; 37 U. S. App. 371] 16: 293

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[90 Fed. 415; 61 U. S. App. 291] 33: 141

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- Arising from granting of patent, aided by allegations of commercial success and extensive use. [100 Fed. 465] 40: 496
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- Bicycle brake, Jefferys's. [84 Fed. 968; 56 U. S. App. 236] 28: 586
- Bicycle saddle top, Christy's, constructing with vertical walled depressions. [93 Fed. 965] 36: 31
- Boot and shoe sole beating-out machine, Cutcheon's. [60 Fed. 80; 5 U. S. App. 507] 8: 475
- Box fastener, Cary's design. [98 Fed. 617] 39: 189
- Box machines, combination, reissue, Beach's. [71 Fed. 420; 35 U. S. App. 667] 18: 165
- Brakeshoe, Wolfarth's, chill hardening extremities through entire mass of metal instead of fractional part only. [99 Fed. 1004] 40: 215
- Breech piece for guns, Eutebrouk's. [91 Fed. 147; 62 U. S. App. 353] 33: 426
- Breaking carts, Putnam's. [67 Fed. 542; 29 U. S. App. 572] 14: 517
- Brick-making machine, Chambers's. [92 Fed. 630] 34: 579
- Broomcorn cleaners, combination, Reese's. [88 Fed. 645; 59 U. S. App. 721] 32: 80
- Button-fastening staples, Vinton's & Prentice's. [72 Fed. 520; 37 U. S. App. 764] 18: 674

## PATENTS—continued.

- Cable railways, Hallidie's, placing dripping device on dummy car attached to carrying car. [60 Fed. 410; 15 U. S. App. 341] 9: 41
- Cable railways, Miller's, connecting pulleys so as to raise them simultaneously. [70 Fed. 853; 35 U. S. App. 764] 17: 467
- Caps and hats, Goebel's. [64 Fed. 787; 26 U. S. App. 453] 12: 416
- Carpet sweepers, Plumb's, permitting brush roller to be pressed down to sweep heavy or light. [72 Fed. 67; 37 U. S. App. 555, 689] 19: 13
- Cars, division into parts, Brown's, void for want of patentable combination. [54 Fed. 521; 7 U. S. App. 636] 4: 491
- Case for exhibiting decorative art at graves, Kraatz's. [85 Fed. 437; 56 U. S. App. 545] 29: 257
- Cask supports, Schreiber's, mere application of mechanical skill. [72 Fed. 871; 43 U. S. App. 10] 19: 67
- Catch-basin covers, Campbell's. [63 Fed. 463; 18 U. S. App. 486] 11: 284
- Cattle guards, Hall's. [49 Fed. 157; 6 U. S. App. 6] 1: 214
- Celluloid articles, Thurber & Schaefer's. [97 Fed. 91] 38: 60
- Chemical fire extinguisher, Steiner's. [59 Fed. 132; 16 U. S. App. 409] 8: 44
- Chest and neck protectors, Way's. [96 Fed. 416] 37: 516
- Cigar molds, Miller & Peters's, mere change of degree without change of function. [76 Fed. 823; 46 U. S. App. 511] 22: 593
- Clay disintegrator, Pott's, substitute of smooth roller for vibratory plate. [97 Fed. 78] 38: 47
- Clock bases, Wright's. [92 Fed. 1019] 35: 163
- Coal screens, Phillips's. [86 Fed. 137; 56 U. S. App. 108] 29: 612
- College badge, design for, Van Roden's. [73 Fed. 488; 39 U. S. App. 214] 19: 592
- Corn husker and sheller, Goddard's, applying new use of old devices. [60 Fed. 411; 18 U. S. App. 492] 9: 42
- Corn planters, Waterman's. [84 Fed. 171; 55 U. S. App. 534] 28: 308
- Corn sheller, combination, Gillet's. [91 Fed. 254; 63 U. S. App. 580] 33: 491
- Crushing and grinding mill, combination, Winchell's. [40 Fed. 641; 6 U. S. App. 14] 1: 410
- Curlings irons, Thompson's, change in shape and location of spring between handles. [67 Fed. 1021; 35 U. S. App. 354] 15: 166
- Cutterhead knives, Caverley's, setting knives at precise angle of 45 degrees. [66 Fed. 305; 24 U. S. App. 617] 13: 452
- Dispensing apparatus for sodawater, etc., combination, Witting's. [78 Fed. 119; 39 U. S. App. 510] 24: 41
- Dredging machine, combination, Osgood's, mere aggregation. [75 Fed. 670; 33 U. S. App. 581] 21: 491
- Dummy car, attaching gripping device of cable railway to. [60 Fed. 410; 15 U. S. App. 341] 9: 41
- Electrical fixture, Stieringer's, without patentable combination. [63 Fed. 840; 28 U. S. App. 53] 11: 446
- Electric cranes, Shaw's, substituting independent electric motors controlled from common point for independent steam engines. [86 Fed. 466; 57 U. S. App. 96] 30: 196
- Electric-lamp socket, Bergman's, compressing instead of drawing apart, contracts while screwing lamp into socket. [66 Fed. 309; 26 U. S. App. 737] 13: 487
- Electric-light fixtures, Stieringer's, reissue. [86 Fed. 124; 57 U. S. App. 200] 29: 607
- Electric-lighting circuit, Edison's, mere application of mechanical and engineering skill. [63 Fed. 588; 28 U. S. App. 1] 11: 342
- Electric machine frames design, Schmid's. [97 Fed. 99] 38: 65



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Electric-railway devices, Van Depoele's.	[86 Fed. 636; 58 U. S. App. 13]	30: 313
Electric-railway switches, combination, Van Depoele's.	[71 Fed. 396; 38 U. S. App. 55]	18: 145
Electric snap switch, Hart's.	[92 Fed. 657]	34: 606
Electric wiring, combination, Johnson & Greenfield's.	[89 Fed. 1018; 45 U. S. App. 754]	32: 487
Elevator operation, device for controlling, Reynolds's.	[71 Fed. 876; 39 U. S. App. 95]	18: 375
Engine frames, Ide's.	[89 Fed. 491; 60 U. S. App. 610]	32: 260
Excavators, Keating's.	[69 Fed. 351; 29 U. S. App. 629]	15: 476
Eye-glass holder, combination, Clawson's.	[61 Fed. 680; 26 U. S. App. 1]	10: 10
Fire proof fabric, Beer's.	[100 Fed. 465]	40: 496
Floral design, Krick's.	[61 Fed. 847; 26 U. S. App. 80]	10: 114
Fly paper, Thum's, placing sticky surfaces face to face.	[67 Fed. 911; 33 U. S. App. 39]	15: 67
Folding bed-lounge, Clune's, using pin or hook on back to automatically engage with eye on headrest.	[82 Fed. 227; 53 U. S. App. 385]	27: 115
Folding beds, Hale's.	[60 Fed. 958; 28 U. S. App. 525]	16: 569
Folding beds, combination, Welch's.	[58 Fed. 583; 5 U. S. App. 556]	7: 382
Folding screens, Campbell's, removing surplus materials or needless parts.	[71 Fed. 416; 34 U. S. App. 508]	18: 162
Friction match device, Pusey's.	[77 Fed. 208; 39 U. S. App. 386]	23: 122
Fumigating plants and trees, process of, Wall, Jones & Bishop's, using at night or in cloudy weather.	[66 Fed. 552; 29 U. S. App. 458]	13: 630
Galvanic batteries, Holtzer's, casting cover, cup, and lip in solid piece.	[67 Fed. 907; 33 U. S. App. 80]	15: 63
Gang edgers, Armstrong's, constructing guide bar in two pieces instead of one.	[69 Fed. 827; 22 U. S. App. 703]	16: 451
Gas and electric-light fixture, Stieringer's, without patentable combination.	[63 Fed. 840; 28 U. S. App. 53]	11: 446
Glass-chipping process, Evans's.	[83 Fed. 706; 53 U. S. App. 567]	28: 24
	[86 Fed. 779; 58 U. S. App. 534]	30: 367
Glassware crimping device, Northwood's.	[100 Fed. 98]	40: 295
Grain drill, Mullen's.	[82 Fed. 636; 53 U. S. App. 532]	27: 240
Grain elevators, Dunbar's reissue, mere selection of existing devices and application to new environment.	[81 Fed. 201; 51 U. S. App. 319]	26: 330
Hats and caps, Goebel's.	[64 Fed. 787; 26 U. S. App. 453]	12: 416
Hay elevator tracks, Ney's.	[69 Fed. 405; 37 U. S. App. 371]	16: 293
Heating conductors adapted to be connected with supply conductors, Dewey's.	[81 Fed. 800; 51 U. S. App. 550]	26: 648
Hoistway cover, means for closing and controlling, Frasers's.	[79 Fed. 442; 45 U. S. App. 594]	24: 673
Hotel cabinet, Manly & Daily's.	[89 Fed. 308; 60 U. S. App. 572]	32: 216
Hydraulic-elevator apparatus, combination, Reynolds's.	[76 Fed. 767; 46 U. S. App. 411]	22: 549
Incandescent electric lamp, combination, Edison's, substituting carbon filament for platinum wire.	[52 Fed. 300; 11 U. S. App. 1]	3: 83
Inclined pleasure railway, with toboggan, Newburg's, mere structural change.	[87 Fed. 225; 58 U. S. App. 53]	30: 617
Ironing machines, Baldwin's.	[67 Fed. 336; 35 U. S. App. 284]	14: 405
Lacing hook, feeding and setting machine, combination, Eppler's, bringing together parts from various machines of same character.	[70 Fed. 66; 33 U. S. App. 306]	16: 639

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Lacing studs, Mathison's, void in view of prior art.	[89 Fed. 1016; 45 U. S. App. 758]	32: 466
Lamp burner, Wilson's.	[54 Fed. 495; 11 U. S. App. 758]	4: 484
Lamp chimney tops, design for, Macbeth's.	[64 Fed. 118; 28 U. S. App. 99]	12: 70
Lamp stove, design for, Myers's.	[81 Fed. 854; 48 U. S. App. 494]	26: 642
Lasting and fastening machine, Woodward's.	[82 Fed. 97; 50 U. S. App. 164]	27: 69
Lawn-tennis shoes, Marshall's.	[61 Fed. 241; 21 U. S. App. 118]	9: 453
Leather cutting machine, Parson's combination.	[100 Fed. 455]	40: 486
Lubricating devices, Ide's.	[89 Fed. 491; 60 U. S. App. 610]	32: 260
Luggage carrier for cycles, Allen, Sachtleben & Walters's.	[80 Fed. 540; 53 U. S. App. 234]	25: 625
Maltha coated paper, Pearce & Beardsley's, dispensing with use of solvent.	[68 Fed. 483; 28 U. S. App. 457]	15: 516
Map case, Nutting's, altering capacity or making portable or more ornamental.	[77 Fed. 835; 46 U. S. App. 608]	23: 488
Metal cutting saws, Fowler's.	[96 Fed. 238]	37: 456
Metallic sealing panels, Kinnear's, substituting rounded for square corners.	[87 Fed. 333; 58 U. S. App. 357]	31: 3
Overshoe, Williams's.	[54 Fed. 498; 14 U. S. App. 55]	4: 485
Paper bags, reissue, Deering's, changing sequence of previously known operations.	[70 Fed. 240; 35 U. S. App. 628]	17: 84
Paper boxes, manufacture of, prior Shelton patent.	[81 Fed. 395; 51 U. S. App. 395]	26: 448
Paper-box machine, Munson's, substituting firm piece of paper for semi-soft sheets of paper packing.	[81 Fed. 395; 51 U. S. App. 395]	26: 448
Paper file, combination, Shannon's connecting old devices.	[77 Fed. 465; 43 U. S. App. 798]	23: 242
Paper file, combination, Shannon's, applying spring used in single paper file to double file.		Id.
Paper machine combination, Campbell's.	[58 Fed. 212; 14 U. S. App. 517]	7: 191
Pill-dipping device, Russell's, prior use.	[85 Fed. 218; 54 U. S. App. 591]	29: 121
Pins for holding insulators for electric wires, Klein's.	[77 Fed. 200; 44 U. S. App. 741]	23: 114
Pipe cutters, Saunders's, reissue, placing antifriction rollers in jaw.	[60 Fed. 610; 20 U. S. App. 446]	9: 157
Pliers, Bernard's.	[91 Fed. 775; 63 U. S. App. 128]	34: 83
Pneumatic drilling tool, Bates's, bringing together and adapting various parts necessary to form cylindrical tool.	[71 Fed. 523; 38 U. S. App. 129]	18: 235
Pool ball frame, Collender's.	[79 Fed. 85; 51 U. S. App. 9]	24: 451
Printing machine, Kidder's.	[69 Fed. 250; 37 U. S. App. 250]	16: 220
Privy furnace, Ross's.	[71 Fed. 965; 33 U. S. App. 410]	18: 402
Pyroxyline compound, Stevens & Harrison's.	[97 Fed. 91]	38: 60
Rail braces, manufacture of, Alkins's.	[83 Fed. 170; 54 U. S. App. 330]	27: 502
Railway switches, Brahn's.	[90 Fed. 493; 61 U. S. App. 457]	33: 619
Ranges and stoves, combination, Hayes's.	[90 Fed. 707; 61 U. S. App. 473]	33: 249
Ratchet wrench, Forbes's, discloses only exercise of mechanical skill.	[66 Fed. 318; 31 U. S. App. 123]	13: 494
Receipt and record book, Loewenbach's, void in view of prior state of art.	[92 Fed. 661]	34: 610

## PATENTS—continued.

- Roller coasters, Thompson's. [93 Fed. 824] 35: 620
- Roll paper cutter, Hopking's, giving additional weight to knife bar. [59 Fed. 147; 16 U. S. App. 559] 8: 56
- Rowboat footboard, Davis's, giving footboard upward curvature of 45 degrees. [71 Fed. 961; 33 U. S. App. 340, 370, 371] 18: 398
- Row locks, Davis's. Id.
- Rugs, design for decorating, Smith's. [58 Fed. 580; 17 U. S. App. 217] 7: 380
- Safety checks, Berry's, Cook's; prior patent. [84 Fed. 846; 55 U. S. App. 375] 28: 505
- Safety valves, Lohbillier's. [94 Fed. 516] 36: 335
- Screw-cutting dies, Forbes's. [66 Fed. 318; 31 U. S. App. 123] 13: 494
- Sewing machines, Willcox & Borton's. [93 Fed. 206; 60 U. S. App. 451] 35: 269  
[93 Fed. 215] 35: 278
- Sewing machine treadles, combination, Brill's. [54 Fed. 380; 7 U. S. App. 601] 4: 374
- Shank stiffener machine, Watson's, not void for use of mechanical equivalents. [51 Fed. 757; 5 U. S. App. 101] 2: 500
- Sheet metal expansible elbow, Ritchie's. [65 Fed. 224; 28 U. S. App. 264] 12: 583
- Shingle machines, Perkins's. [80 Fed. 528; 53 U. S. App. 66] 25: 613
- Shipping boxes, Thompson's. [89 Fed. 197; 60 U. S. App. 309] 32: 186
- Shoe clasps for arctics, combination, Hammond & King's. [72 Fed. 171; 33 U. S. App. 417] 18: 502
- Shoe-heel grinder, Buzzell's. [96 Fed. 997] 37: 656
- Side-bearing girder rails, method of rolling, Moxham's. [56 Fed. 43; 17 U. S. App. 57] 5: 412
- Sinks, Kilbourne's, substituting wrought steel or iron in place of cast metal. [50 Fed. 697; 6 U. S. App. 65] 1: 617
- Sole-cutting machine, Loewer & Blair's, combination, mere application of Blanchard invention. [79 Fed. 325; 39 U. S. App. 554] 24: 612
- Spinning machine spindle support, combination, Atwood's, new arrangement of old parts. [75 Fed. 301; 39 U. S. App. 257] 22: 203
- Spring-tooth harrow, Reed's. [74 Fed. 236; 46 U. S. App. 70] 20: 410
- Stapling machine, Heysinger's, altering slots of guide clip. [61 Fed. 405; 20 U. S. App. 608] 9: 555
- Starch, process of making from corn, Behr's. [84 Fed. 977; 56 U. S. App. 158] 28: 594
- Static electricity generating machine, Atkinson's. [76 Fed. 368; 46 U. S. App. 316] 22: 232
- Stays for garments, Bowling's. [78 Fed. 928; 45 U. S. App. 507] 24: 416
- Steam car heaters, Cody's. [67 Fed. 121; 31 U. S. App. 462] 14: 232
- Steam-heating apparatus, Williams's. [96 Fed. 978] 37: 641
- Steampipe union, Paynter's. [64 Fed. 398; 28 U. S. App. 115] 12: 188
- Steel railroad rails, combination, Johnson's, change in form a mere result of mechanical skill. [51 Fed. 762; 7 U. S. App. 214] 2: 506
- Stemwinding watches, Church's, introducing springs in mechanism for winding and handsetting engagement. [52 Fed. 215; 9 U. S. App. 55] 3: 42
- Stemwinding watches, combination, reissue, Church's, beneficial result of union. [64 Fed. 384; 22 U. S. App. 601] 12: 174
- Stemwinding watches, Colby's. [75 Fed. 17; 43 U. S. App. 391] 21: 198
- Stencil sheets, Broderick's. [88 Fed. 264; 59 U. S. App. 616] 31: 530
- Stitchbreaker for looped fabric sewing machine, combination, Traver's. [70 Fed. 810; 35 U. S. App. 774] 17: 424

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- Stonebreaking machines, Rusk's, Raymond's, Gates's.  
[78 Fed. 350; 41 U. S. App. 201] 24: 132
- Stone crusher, Gates's.  
[85 Fed. 441; 57 U. S. App. 343] 29: 261
- Stoves, Beckwith's.  
[58 Fed. 182; 18 U. S. App. 245] 7: 160
- Stoves, reissue, Boal's.  
[84 Fed. 182; 54 U. S. App. 389] 28: 317
- Stoves and ranges, combination, Hayes's.  
[90 Fed. 707; 61 U. S. App. 473] 33: 249
- Stoves, Keep's, covers results, rather than means of producing them.  
[86 Fed. 463; 58 U. S. App. 465] 30: 193
- Street car, design for, Hammond's, substituting open compartment with seats for open platform.  
[70 Fed. 716; 44 U. S. App. 106] 17: 356
- Street-railway switch, Moxham's, no invention over previous patent to same inventor.  
[70 Fed. 244; 28 U. S. App. 573] 17: 88
- Sulkies, Elliott's, substituting bicycle wheels for higher wheels.  
[100 Fed. 99] 40: 296
- String wrappers, Williams's.  
[84 Fed. 197; 53 U. S. App. 706] 28: 325  
[86 Fed. 641; 57 U. S. App. 369] 30: 318
- Surgical tube of India rubber, Pfarre's.  
[53 Fed. 925; 11 U. S. App. 751] 4: 109
- Tawing leather, process of, Schultz's.  
[70 Fed. 1003; 28 U. S. App. 620] 17: 552
- Telephone circuit, Carty's.  
[95 Fed. 152] 37: 38
- Textile material crimping machine, Crosby & Kellogg's.  
[76 Fed. 227; 45 U. S. App. 105] 22: 138
- Transplanting machine, combination, Alward's, transferring fertilizer hopper to, from machine used for same purpose.  
[77 Fed. 1007; 45 U. S. App. 305] 23: 607
- Trunk lock, combination, Mix's.  
[64 Fed. 789; 26 U. S. App. 388] 12: 418
- Tub-trussing machine, combination, Corcoran's.  
[80 Fed. 293; 53 U. S. App. 104] 25: 426
- Tubular lanterns, Betts's.  
[69 Fed. 841; 14 U. S. App. 709] 13: 687
- Twine binders, reissue, Baker's.  
[69 Fed. 371; 37 U. S. App. 299] 16: 259
- Type-casting molds, Rettig's.  
[95 Fed. 145] 37: 32
- Umbrella stick, Rose's, adding new and useful feature.  
[77 Fed. 469; 39 U. S. App. 369] 23: 246
- Valve reseating tools, Wright's, substituting file with broken surface for disk-shaped file.  
[69 Fed. 621; 32 U. S. App. 712] 16: 342
- Velocipede pedals, Overman's, substituting round bars with wide-working faces for round and fluted rotary bars.  
[58 Fed. 784; 20 U. S. App. 146] 7: 493
- Waffle irons, Griswold's.  
[68 Fed. 494; 37 U. S. App. 171] 15: 525
- Waistband fastener, Ewig's.  
[93 Fed. 677] 35: 537
- Waste valves and overflows for baths and basins, combination, Carr's, mere aggregation of parts.  
[53 Fed. 819; 3 U. S. App. 386] 4: 28
- Watchcase, design for, Untermeyer's, arranging and combining existing elements in different manner.  
[58 Fed. 205; 20 U. S. App. 32] 7: 183
- Watch protector, Benfield, Aufhauser & Milne's, substituting external for internal case.  
[65 Fed. 507; 26 U. S. App. 517] 13: 27
- Waterclosets, Smith's.  
[89 Fed. 297; 60 U. S. App. 338] 32: 205
- Water-purifying method, Hyatt's, dispensing with settling tanks.  
[66 Fed. 152; 26 U. S. App. 547] 13: 380
- Water meters, Nash's.  
[65 Fed. 427; 28 U. S. App. 275] 12: 671
- Web printing machine, Stonemetz's.  
[69 Fed. 250; 37 U. S. App. 250] 16: 220
- Wind engines, combination.  
[57 Fed. 219; 9 U. S. App. 241] 6: 311
- Windmills, Martin's, by substituting internal for external tooth spur wheel.  
[89 Fed. 333; 60 U. S. App. 325] 32: 231

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Windmills, machinery of Martin's.	[82 Fed. 227; 49 U. S. App. 508]	27: 191
Windowsash bars, Henderson's, purely mechanical process.	[67 Fed. 930; 34 U. S. App. 19]	15: 84
Wire fences, Hewitt's, combination of old elements and equivalents.	[99 Fed. 236]	39: 523
Wire fences, Lane & Lane's.		Id.
Wire-mattress frames, Kenney's.	[97 Fed. 337]	38: 205
Wire rod rolling mills, combination, Roberts's.	[71 Fed. 706; 39 U. S. App. 44]	18: 302
Wire weaving shuttle, combination, Wright's.	[67 Fed. 790; 33 U. S. App. 188]	14: 646
Wood-fiber paper, process of rendering soft, McLauchlin's, not mere mechanical process.	[72 Fed. 508; 37 U. S. App. 742]	18: 662
Workmen's time recorder, Bundy's, substitution of pushing for turning key.	[94 Fed. 524]	36: 375

## V. NOVELTY.

**In general.**

Device must be novel to be patentable.	[63 Fed. 463; 18 U. S. App. 486]	11: 284
Device, whether manufacture or machine, must be novel.	[89 Fed. 308; 60 U. S. App. 572]	32: 216
Test of, in manufacture and machine.		Id.
In means employed to produce new article, necessary.	[67 Fed. 911; 33 U. S. App. 39]	15: 67
Accidental details of difference.	[66 Fed. 765; 24 U. S. App. 649]	14: 77
Not negatived by prior accidental production of same thing.	[88 Fed. 264; 59 U. S. App. 616]	31: 530
Large sales of patented machines as evidence of.	[52 Fed. 205; 6 U. S. App. 200]	3: 32
Large sales and increasing popularity as proof of.	[93 Fed. 965]	36: 31
Effect of prior purchase and sale of article under patent as an admission of novelty.	[77 Fed. 469; 39 U. S. App. 369]	23: 246
Reading into claims parts not named therein, to make out.	[85 Fed. 218; 54 U. S. App. 591]	29: 121
Raising question of novelty by demurrer.	[72 Fed. 508; 37 U. S. App. 742]	18: 662
Judicial notice of facts showing want of.		Id.
Novelty, prior patents, necessity of expert testimony.	[55 Fed. 982; 14 U. S. App. 312]	5: 371
Scandalous pamphlet irrelevant to issue of novelty.		Id.
Mixed question of law and fact.	[82 Fed. 737; 48 U. S. App. 691]	27: 377
	[92 Fed. 153; 48 U. S. App. 691]	34: 267

**Combinations.**

Combination of old elements producing useful result not before successfully accomplished.	[95 Fed. 145]	37: 32
All elements need not have been used before, and in same relation, to deprive claim of novelty.	[89 Fed. 297; 60 U. S. App. 333]	32: 205
Combining old devices in connection with threshing grain with broomcorn cleaner.	[88 Fed. 645; 59 U. S. App. 721]	32: 80
Congregating devices in new location.	[81 Fed. 201; 51 U. S. App. 319]	26: 330

**Designs.**

Novelty of design, how tested.	[64 Fed. 118; 28 U. S. App. 99]	12: 70
Originality and exercise of inventive faculty essential to validity of design patent.	[98 Fed. 617]	39: 189

**PATENTS—continued.**

In scroll work on prominent features of stoves, broad claim for, not allowed.  
[84 Fed. 182; 54 U. S. App. 389] 28: 317

**Particular patents.**

- Atomizers, Shurtleff's, securing nozzle directly to stopper.  
[74 Fed. 634; 33 U. S. App. 470] 20: 566
- Ax forging machine, Taylor's. [97 Fed. 795] 38: 423
- Bale ties, Kilmer's. [74 Fed. 561; 45 U. S. App. 51] 20: 658
- Balls and rosettes of yarn, mode of manufacturing, Boehm's.  
[50 Fed. 106; 1 U. S. App. 118] 1: 488
- Band-shell for wheel hubs, Higgin's. [100 Fed. 459] 40: 491
- Boiler deflector, Kennedy's. [56 Fed. 845; 9 U. S. App. 580] 6: 161
- Brick mold, sanding machine, Buck's.  
[84 Fed. 887; 51 U. S. App. 722] 28: 561
- Corn cultivators, King and Morgan's, combination, without new result.  
[56 Fed. 841; 9 U. S. App. 567] 6: 157
- Corn shellers, combination, Gillet's. [91 Fed. 254; 63 U. S. App. 580] 33: 491
- Cultivaters, Gardiner & Downey's. [53 Fed. 120; 9 U. S. App. 147] 3: 477
- Cultivaters, Mast's. Id.
- Dress stays, Janowitz's. [82 Fed. 63; 51 U. S. App. 474] 27: 61
- Dry closets, Smead's. [57 Fed. 626; 14 U. S. App. 578] 6: 481
- Duplex box hinge, combination, Atwood's.  
[48 Fed. 910; 5 U. S. App. 1] 1: 144
- Electric rail connector, Leib's. [54 Fed. 385; 9 U. S. App. 509] 4: 381
- Electric-railway switches, combination, Van Depoele's.  
[71 Fed. 396; 38 U. S. App. 55] 18: 145
- Feed water heaters and purifiers, combination, Ferreira's.  
[89 Fed. 498; 60 U. S. App. 589] 32: 267
- Feed-water heater and purifier, gas-discharge pipe, Stilwell's.  
[57 Fed. 731; 16 U. S. App. 234] 6: 528
- Fire crackers, Hunt's. [84 Fed. 1018; 50 U. S. App. 305] 28: 641
- Fire extinguisher, automatic, Barnes's.  
[60 Fed. 605; 18 U. S. App. 538] 9: 154
- Glass-chipping process, Evans's. [93 Fed. 706; 53 U. S. App. 567] 28: 24  
[86 Fed. 779; 58 U. S. App. 534] 30: 367
- Glass-melting tank, Siemen's. [59 Fed. 151; 17 U. S. App. 373] 8: 61
- Hammocks, Palmer's. [93 Fed. 464] 35: 389
- Ice planers, Briggs's, incorporating in old combination device from prior art.  
[93 Fed. 972] 36: 38
- Illuminating tiles, Jackson's, mere equivalent for former device.  
[56 Fed. 582; 15 U. S. App. 108] 6: 39
- Inclined pleasure railway with toboggan, Newburg's.  
[87 Fed. 225; 58 U. S. App. 53] 30: 617
- Lamp burner, Wilson's. [54 Fed. 495; 11 U. S. App. 758] 4: 484
- Lamp chimney tops, design for, Macbeth's.  
[64 Fed. 118; 28 U. S. App. 99] 12: 70
- Lawn-tennis shoes, Marshall's. [61 Fed. 211; 21 U. S. App. 118] 9: 453
- Lubricating devices, Ide's. [89 Fed. 491; 60 U. S. App. 610] 32: 260
- Means for securing against excessive losses by bad debts, Maybaum's.  
[59 Fed. 139; 20 U. S. App. 172] 8: 49
- Metal-cutting saw, Thompson's. [75 Fed. 572; 35 U. S. App. 342] 21: 486
- Miter cutting machines, reissue, Fox's, void in view of prior state of art.  
[52 Fed. 205; 6 U. S. App. 200] 3: 32
- Order holder, McClery & Page's. [63 Fed. 841; 24 U. S. App. 124] 11: 451
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Seed cotton handling apparatus, combination, Munger's, use of equivalents.	[49 Fed. 61; 2 U. S. App. 55]	1: 158
Sewing machines, Willcox & Borton's.	[93 Fed. 206; 60 U. S. App. 451]	35: 269
Sheet metal roofing plate, Walter's.	[54 Fed. 385; 9 U. S. App. 489]	4: 379
Spring mattress, Fulton's.	[81 Fed. 959; 51 U. S. App. 517]	27: 23
Steam-heating apparatus, combination, William's.	[96 Fed. 978]	37: 641
Stencil sheets, Broderick's.	[88 Fed. 264; 59 U. S. App. 616]	31: 530
Stoves, design for, scroll work on, Boal's reissue.	[84 Fed. 182; 54 U. S. App. 389]	28: 317
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Wheel harrows, combination, Corbin's mere change in location of lever.	[60 Fed. 417; 18 U. S. App. 518]	9: 49
Windmills, Martin's.	[82 Fed. 227; 49 U. S. App. 508]	27: 191
Wood fiber paper, process of softening, McLauchlin's.	[72 Fed. 508; 37 U. S. App. 742]	18: 662

## VI. ANTICIPATION.

## In general.

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- Prior public use as defense to infringement, what constitutes.  
[58 Fed. 705; 19 U. S. App. 239] 7: 439
- Indiscriminate public use, not of especial value in suit on patents.  
[98 Fed. 892] 39: 332
- Knowledge and use by others before date of patentee's actual invention, necessary to defeat patent.  
[98 Fed. 613] 39: 185
- Recollection as to prior use.  
[59 Fed. 147; 16 U. S. App. 559] 8: 56
- Indefinite and contradictory testimony as to.  
[58 Fed. 205; 20 U. S. App. 32] 7: 183
- Defense of prior public use, single unrestricted sale, experimental.  
[58 Fed. 414; 20 U. S. App. 14] 7: 279
- Evidence to show public use, without notice of such defense.  
[72 Fed. 773; 44 U. S. App. 369] 19: 188
- Sufficiency of notice of prior patents to warrant their introduction in support of defense of anticipation.  
[60 Fed. 610; 20 U. S. App. 446] 9: 157
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[95 Fed. 1006] 37: 356
- Defense of prior sale, degree of proof.  
[58 Fed. 401; 17 U. S. App. 195] 7: 275
- Degree of evidence necessary to establish prior public use for sale.  
[82 Fed. 227; 49 U. S. App. 508] 27: 191
- Sufficiency of evidence to show.  
[89 Fed. 329; 60 U. S. App. 297] 32: 221
- Sufficiency of evidence of, model made from recollection.  
[81 Fed. 726; 49 U. S. App. 414] 26: 578
- Effect of expert opinions.  
[84 Fed. 649; 55 U. S. App. 464] 28: 507
- How fact of invention shown against defense of.  
[80 Fed. 121; 48 U. S. App. 120] 25: 323
- To sustain defense of anticipatory matter, must clearly show invention subsequently patented.  
[96 Fed. 978] 37: 641
- Failure of answer to allege that prior use was "in this country."  
[58 Fed. 705; 19 U. S. App. 239] 7: 439
- Existence and prior public use, effect of ignorance of advantages.  
[84 Fed. 182; 54 U. S. App. 389] 28: 317
- Effect of prior inventor's failure to appreciate advantage of combination pointed out in patent.  
[60 Fed. 93; 20 U. S. App. 268] 8: 485
- Similar structure in well-established use.  
[74 Fed. 236; 46 U. S. App. 70] 20: 410
- Application of process to different liquids.  
[48 Fed. 206; 3 U. S. App. 1] 1: 73
- Specific anticipation, evidence of assignment before patent.  
[56 Fed. 587; 15 U. S. App. 143] 6: 45
- By prior foreign patent, requisites of descriptions or drawings.  
[84 Fed. 649; 55 U. S. App. 464] 28: 507
- Mechanical patent immaterial on question of anticipation of design patent for same article.  
[95 Fed. 1006] 37: 356
- Whether machine relied on as, possessed utility, unimportant.  
[70 Fed. 66; 33 U. S. App. 306] 16: 639
- Award to later inventor, where successful and earlier unsuccessful.  
[64 Fed. 599; 29 U. S. App. 125] 12: 324
- Doubt as to identity as to methods and results resolved in favor of successful patentee.  
[93 Fed. 958] 36: 24
- Granting patent for specific improvement pending application for broad invention, effect of.  
[71 Fed. 396; 38 U. S. App. 55] 18: 145
- Patent for broad invention, effect of granting patent for improvements pending application.  
[80 Fed. 712; 54 U. S. App. 1] 26: 107
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Carrying back invention to avoid, proof, necessary.

[81 Fed. 403; 50 U. S. App. 151] 26: 456

Showing date of application for foreign patent subsequently patented in United States, to show actual date of invention. [98 Fed. 613] 39: 185

Admissibility, under answer, of evidence of dates of respective inventions, carrying back public notice to date of application.

[60 Fed. 605; 18 U. S. App. 538] 9: 154

Evidence of trained mechanics as to ease in duplicating alleged infringing device.

[71 Fed. 876; 39 U. S. App. 95] 18: 375

**Particular patents.**

Air brakes, Dixon's, by Westinghouse's. [96 Fed. 991] 37: 649

Air brake valve, Westinghouse's, by prior patent to same patentee.

[63 Fed. 962; 26 U. S. App. 248] 11: 528

Artificial-teeth-inserting device, Low's. [77 Fed. 313; 45 U. S. App. 171] 23: 179

Asphalt pavement repairing process, Perkins's, by Crochet's French patent.

[95 Fed. 137] 37: 28

Ax forging machine, Taylor's. [97 Fed. 795] 38: 423

Bale ties, Kilmer's, by Griswold's. [67 Fed. 1017; 35 U. S. App. 246] 15: 161

Bale ties, Kilmer's, by Smith's. [74 Fed. 561; 45 U. S. App. 51] 20: 658

Beating out machine, Cutcheon's, not by Collyer's nor DeForest's.

[99 Fed. 280] 39: 508

Beer aerating process, Zinsser's, by various English and French patents.

[48 Fed. 296; 3 U. S. App. 1] 1: 73

Bent handle rounding machine, Caverley's.

[66 Fed. 305; 24 U. S. App. 617] 13: 452

Bicycle bell, combination, Rockwell's, by Bennett's, English.

[73 Fed. 469; 38 U. S. App. 292] 19: 534

Bicycle brake, Jeffery's. [84 Fed. 968; 56 U. S. App. 236] 28: 586

Boot and shoe counter flanging machine, Hurlbut & Kennard's, by Kriebel's.

[80 Fed. 518; 50 U. S. App. 101] 25: 611

Boot or shoe lasts, Sacks & Richmond's, by Dusenberry's.

[81 Fed. 403; 50 U. S. App. 151] 26: 456

Brick mold sanding machines, Buck's.

[84 Fed. 887; 51 U. S. App. 722] 28: 561

Brick mold sanding machine, Buck's, by prior patent to same inventor.

[84 Fed. 182; 54 U. S. App. 389] 28: 317

Carbon conductors for incandescent lamps, process of making, Weston's, by Sawyer and Man's.

[58 Fed. 692; 17 U. S. App. 334] 7: 435

Cattle guards, Hall's, by Akin's and by Kline's.

[49 Fed. 157; 6 U. S. App. 6] 1: 214

Chemical fire extinguisher, Steiner's, by Latta's.

[59 Fed. 132; 16 U. S. App. 409] 8: 44

Churns, combination, Palmer's, by Dobson's.

[54 Fed. 509; 9 U. S. App. 465] 4: 489

Corn planters, O'Dell's. [89 Fed. 329; 60 U. S. App. 297] 32: 221

Creaming milk, process of, Houston & Thomson's.

[84 Fed. 881; 55 U. S. App. 602] 28: 555

Cuff buttons, design, Flomerfelt's.

[95 Fed. 1006] 37: 356

Cutterhead for rounding bent handles, Caverley's.

[66 Fed. 305; 24 U. S. App. 617] 13: 452

Dies for forging metal articles, Simond's, by Bundy's.

[93 Fed. 958] 36: 24

Door hanger, Sumner's, by Kasson's. [83 Fed. 1021; 51 U. S. App. 753] 28: 259

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[77 Fed. 303; 39 U. S. App. 399] 23: 176

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- Dynamo electric machines, regulation of currents in, Thomson's & Houston's, by patent to same inventors. [70 Fed. 69; 34 U. S. App. 186] 16: 642  
[72 Fed. 530; 34 U. S. App. 619] 19: 1
- Electric circuit opener or cut-off, automatic, Rousseau's. [78 Fed. 113; 45 U. S. App. 266] 24: 7
- Electric-lamp socket, Bergman's, by slight compression of contact in previously existing lamp. [66 Fed. 309; 26 U. S. App. 737] 13: 487
- Electric-light fixtures, Stieringer's, reissue, by Edison's, or "ferryboat" fixture used in boat Jersey City. [86 Fed. 124; 57 U. S. App. 200] 29: 607
- Electric motor controlling switch, Condict's, by Paine's. [91 Fed. 142; 62 U. S. App. 373] 33: 420
- Electric railway devices, Van Depoele's. [86 Fed. 636; 58 U. S. App. 13] 30: 313
- Electric railway signalling apparatus, Westinghouse's. [96 Fed. 761] 37: 580
- Electric snap switches, Hart's. [92 Fed. 657] 34: 606
- Elevator operation, means for controlling, Reynolds's, by Lampe's, German, or by Baldwin's. [71 Fed. 876; 39 U. S. App. 95] 18: 375  
[76 Fed. 767; 46 U. S. App. 411] 22: 549
- Enameled iron ware, process for variegating, Kegreisz's, by Vollrath's. [55 Fed. 292; 14 U. S. App. 226] 5: 111
- Fabrics, sewing or quilting machine, Palmer's. [92 Fed. 925] 35: 86
- Fabrics, Palmer's and Huss's, invalid because previously made by each, basis for patent for pneumatic bicycle tire. [90 Fed. 732; 62 U. S. App. 651] 33: 255
- Feed water heater and purifier. Stilwell's. [57 Fed. 731; 16 U. S. App. 234] 6: 528
- Fence-wire coupling, Morrison's. [97 Fed. 502] 38: 300
- Folding beds, Hale's, not such obvious similarity as would suggest later patent to ordinary mechanic. [69 Fed. 958; 28 U. S. App. 525] 16: 569
- Folding machine, Crowell's. [70 Fed. 781; 28 U. S. App. 636] 17: 410
- Fruit parers, Scott's, by former patent to same patentee. [55 Fed. 971; 3 U. S. App. 643] 5: 366
- Glass-melting tank, Siemen's. [59 Fed. 151; 17 U. S. App. 373] 8: 61
- Hay press, power mechanism for, Sooy's. [81 Fed. 726; 49 U. S. App. 414] 26: 578
- Hot air engines, reissue, Ericsson's, invalid because of prior public use. [58 Fed. 414; 20 U. S. App. 14] 7: 279
- Ice planers, combination, Briggs's modification of previous device patented by Butterfield. [60 Fed. 87; 20 U. S. App. 374] 8: 480
- Incandescent mantles, Rawson's, by Welsbach. [98 Fed. 613] 39: 185
- Kiln for drying lumber, Emerson's. [99 Fed. 737] 40: 87
- Knitted fabrics, Bywater's, by Booth's. [84 Fed. 649; 55 U. S. App. 464] 28: 507
- Lacing hook feeding and setting machine, combination, Eppler's. [70 Fed. 66; 33 U. S. App. 306] 16: 639
- Lumber drying kiln, Emerson's. [99 Fed. 737] 40: 87
- Magazine firearm, Roper's. [99 Fed. 294] 39: 534
- Municipal signaling apparatus, improvements in, Noyes's. [61 Fed. 948; 21 U. S. App. 157] 10: 184
- Paper boxes, Ritter's, by Davis's, English. [86 Fed. 917; 57 U. S. App. 66] 30: 487
- Photographic films, processes of coating, Eastman & Walker's, by Sarony & Johnson's. [84 Fed. 458; 55 U. S. App. 235] 28: 459
- Photographic apparatus, Walker & Eastman's, by Mann's, for map rack. [64 Fed. 491; 21 U. S. App. 574] 12: 603
- Plastic substance cutting mechanism, Baker's. [53 Fed. 791; 3 U. S. App. 414] 3: 672

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- Pneumatic tire inflating device, combination, Johnson's.  
[71 Fed. 411; 34 U. S. App. 498] 18: 157
- Pressure relief apparatus for beer vessels, Zwietsch and Heitmann's, by Schaefer's.  
[60 Fed. 93; 20 U. S. App. 268] 8: 485
- Photographic apparatus, Houston's by previous cylindrical cloth measuring machine.  
[64 Fed. 491; 21 U. S. App. 574] 12: 603
- Pyroxyline compound, Stevens & Harrison's by Mehling's.  
[97 Fed. 91] 38: 60
- Railroad rail carrying apparatus, combination, Gustin's reissue, by While and Wostenholm's.  
[53 Fed. 120; 9 U. S. App. 301] 3: 474
- Railroad spike, Goldie's, by patent for horse nail.  
[84 Fed. 972; 56 U. S. App. 68] 28: 589
- Refrigerator crates, Schrei's, by Douglas's and by Colton's.  
[91 Fed. 992] 34: 153
- Roll-paper holder and cutter, Hopking's.  
[59 Fed. 147; 16 U. S. App. 559] 8: 56
- Safety valves, combination, Ashton's, by Gile's, English.  
[52 Fed. 314; 8 U. S. App. 169] 3: 98
- Saline solution cooling apparatus, Cogswell's, by Gerstenhofer's and by Wigg's, English.  
[90 Fed. 818; 62 U. S. App. 212] 33: 285
- Secondary batteries, Brush's, by Percival's or by Leclanche's.  
[52 Fed. 130; 1 U. S. App. 320] 2: 682
- Shank stiffener machines, Watson's.  
[51 Fed. 757; 5 U. S. App. 101] 2: 500
- Shoe heel grinder, Buzzell's, by Rogers's.  
[96 Fed. 997] 37: 656
- Spinning machine spindle support, combination, Atwood's, by similar devices in centrifugal machines or hydro-extractors.  
[75 Fed. 301; 39 U. S. App. 257] 22: 203
- Spring tooth harrows, Reed's, by previous well-established use of like structure.  
[74 Fed. 236; 46 U. S. App. 70] 20: 410
- Starch, process of making from corn, Behr's, by Anderson's or by Cavaye, British.  
[84 Fed. 977; 56 U. S. App. 158] 28: 594
- Steam generators, Morrin's by Morrin & Scott's.  
[99 Fed. 977] 40: 204
- Steam generators, Morrin & Scott's.  
Id.
- Stone breaker, combination, Gates's.  
[78 Fed. 350; 41 U. S. App. 201] 24: 132
- Stone crusher, combination, Gates's.  
[85 Fed. 441; 57 U. S. App. 343] 29: 261
- Street-car trucks, Brill's by Woodbury's.  
[90 Fed. 666; 62 U. S. App. 276] 33: 213
- Surgical tube of India rubber, Pfarre's.  
[53 Fed. 925; 11 U. S. App. 751] 4: 109
- Suspended switches and traveling contacts for electric railways, Van De-  
poele's prior patent to same inventor.  
[80 Fed. 712; 54 U. S. App. 1] 26: 107
- Tawing leather, process of, Schultz's.  
[81 Fed. 178; 39 U. S. App. 652] 26: 326
- Tawing leather, process of, Schultz's by similar process for dyeing fabrics and  
wools.  
[70 Fed. 1003; 28 U. S. App. 620] 17: 552
- Telephone circuit, Carty's.  
[95 Fed. 152] 37: 38
- Track brake for railway cars, combination, Roots, by Godwin's, Patterson's, or  
Huntington & Carter's.  
[60 Fed. 90; 15 U. S. App. 313] 8: 484
- Traveling bag and satchel catches, Lieb's by Lagowitz's spring catch.  
[73 Fed. 833; 39 U. S. App. 193] 20: 31
- Trolley wire connection, Kisinger's by Morrison's.  
[97 Fed. 502] 38: 300
- Twine binders, Gorham's by Spaulding's.  
[69 Fed. 371; 37 U. S. App. 299] 16: 259
- Type-casting molds, Hochtadt, Wenzel, & Heinebach's by Mason's.  
[95 Fed. 145] 37: 32

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Waffle irons, Griswold's, by Harrington & Tower's for coffee roasters.	
[68 Fed. 494; 37 U. S. App. 171]	15: 525
Wagon stake pocket, Bothe's by Brownell's casting in one piece.	
[50 Fed. 536; 4 U. S. App. 317]	1: 575
Waistband fastener, Ewig's.	[93 Fed. 677] 35: 537
Water-sealed creaming cans, Butler's by Garrard's or by Timby's.	
[56 Fed. 143; 14 U. S. App. 439]	5: 451
Water-sealed creaming cans, Cooley's by Garrard's.	Id.
Wire connections, Morrison's.	[97 Fed. 502] 38: 300
Wire glass, process for, Shuman's by Armstrong's English patent.	
[97 Fed. 950]	38: 573
Wire-rod rolling mills, combination, Roberts's.	
[71 Fed. 706; 39 U. S. App. 44]	18: 302
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[72 Fed. 508; 37 U. S. App. 742]	18: 662
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## VII. ABANDONMENT.

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When patent conclusive against abandonment of application.	
[58 Fed. 186; 18 U. S. App. 177]	7: 164
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[80 Fed. 395; 50 U. S. App. 52]	25: 500
Delay in applying for patent, test of diligence.	
[80 Fed. 121; 48 U. S. App. 120]	25: 323
Disuse by farmer of broom-corn cleaner used on own farm.	
[38 Fed. 645; 59 U. S. App. 721]	32: 80
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[91 Fed. 792; 63 U. S. App. 56]	34: 86

## VIII. INTERFERENCE; PRIORITY OF INVENTION.

Relation back to date of conception, diligence necessary.	
[55 Fed. 69; 6 U. S. App. 520]	5: 33
Right to carry back date of invention to date of drawings.	
[77 Fed. 630; 47 U. S. App. 205]	23: 367
One inventor participating in other's application, effect of.	
[71 Fed. 876; 39 U. S. App. 95]	18: 375
Effect of first inventor inducing other person to delay making application.	Id.
Party first introducing new feature into existing device or machine.	
[69 Fed. 841; 14 U. S. App. 709]	13: 687
Effect of mere intellectual notion that a certain thing can be done.	
[77 Fed. 630; 47 U. S. App. 205]	23: 367
One subsequently conceiving idea, but first using it in producing article.	
[67 Fed. 917; 35 U. S. App. 221]	15: 73
What constitutes reduction to practice, rough sketch.	
[55 Fed. 69; 6 U. S. App. 520]	5: 33
Instance of delay in reducing to practice, excuse.	Id.
Failure to construct machine under patent, not proof of invalidity.	
[70 Fed. 66; 33 U. S. App. 306]	16: 639
Burden resting on second reducer to practice, how discharged.	
[77 Fed. 630; 47 U. S. App. 205]	23: 367
Ineffectual efforts to embody idea, abandoned before reaching point after which only mechanical skill required.	Id.

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- Right of appropriator of idea to avail himself of neglect to push conception to completion. Id.
- Effect of withdrawing claim for element subject of interference. [61 Fed. 945; 17 U. S. App. 555] 10: 181
- Correspondence between construction and language of claim and interference. [55 Fed. 69; 6 U. S. App. 520] 5: 33
- Failure to raise question in interference proceedings, whether invention includes issue declared upon. Id.
- Failure to move for dissolution of interference as acquiescence in ruling. [79 Fed. 432; 45 U. S. App. 665] 24: 663
- Burden of proving priority. [67 Fed. 121; 31 U. S. App. 462] 14: 232
- Comparative numbers of patents issued the same day as proof of priority. [52 Fed. 130; 1 U. S. App. 320] 2: 682
- Evidence as to first inventor, stipulation. [61 Fed. 945; 17 U. S. App. 555] 10: 181
- Oral evidence showing prior state of art, in proceeding to cancel interfering patent. [67 Fed. 917; 35 U. S. App. 221] 15: 73
- Evidence in proceedings to cancel interfering patent by patent office officials, that patent issued fraudulently or negligently. Id.
- Testimony previously taken in patent office, on interference proceedings, admissible in subsequent action to cancel interfering patent. Id.
- Opinion of patent commissioner in interference proceeding inadmissible in subsequent suit to cancel interfering patent. Id.
- Court not limited to determination of question of priority. [90 Fed. 732; 62 U. S. App. 651] 33: 255
- Priorities not adjudicated where neither patent valid. Id.
- Finding that plaintiff not original inventor. [58 Fed. 871; 17 U. S. App. 254] 7: 351
- Conclusiveness of decision by patent office as to interference. [62 Fed. 404; 24 U. S. App. 74] 10: 441
- Presumption on review, in favor of decision on question of priority. [77 Fed. 630; 47 U. S. App. 205] 23: 367
- Review on appeal as to original inventor of improvement in cartridge-loading machinery. Id.

**IX. APPLICATION AND ISSUE; CLAIMS AND SPECIFICATIONS.**

See also *infra*, XII.

- Bill to compel issuance, questions considered. [55 Fed. 69; 6 U. S. App. 520] 5: 33
- Importing description in patent into complaint by reference. [82 Fed. 737; 48 U. S. App. 691] 27: 377
- Alterations of patent by certificate of correction. [52 Fed. 300; 11 U. S. App. 1] 3: 83
- Patent for naphthol black color compound, Hoffman and Weinberg's invalid for claiming too broad discovery. [78 Fed. 910; 45 U. S. App. 473, 557] 24: 384
- Fraudulent suppression or misrepresentation; what is. Id.
- Immaterial omissions and errors by solicitor. Id.
- Failure to refer, in application, to foreign patents. [82 Fed. 449; 50 U. S. App. 180] 27: 316
- Validity of patent not affected by expressing erroneous scientific theory in specification. [90 Fed. 829; 58 U. S. App. 778] 33: 387

**Sufficiency of description of invention.**

- Enabling ordinary mechanic to overcome difficulty. [70 Fed. 66; 33 U. S. App. 306] 16: 639

**PATENTS—continued.**

- Failure to specify what one skilled in art would know.  
[55 Fed. 292; 14 U. S. App. 226] 5: 111
- To enable one skilled in art to construct successful incandescent electric lamp.  
[52 Fed. 300; 11 U. S. App. 1] 3: 83
- Failure to detail process of exhausting bulb. Id.
- Failure to identify specific means by which result achieved.  
[70 Fed. 816; 25 U. S. App. 475] 17: 430
- Failure to fully describe all beneficial functions.  
[69 Fed. 371; 37 U. S. App. 299] 16: 259
- Necessity of specifying maximum and minimum dimensions of carbon filament.  
[52 Fed. 300; 11 U. S. App. 1] 3: 83
- Pointing out only new part of claim in improvement.  
[72 Fed. 67; 37 U. S. App. 555, 689] 19: 13
- Supports for spindles for spinning machines, improvements in, omitting device for revolving spindle. [75 Fed. 301; 39 U. S. App. 257] 22: 203
- Validity of patent for combination of spindle, omission of sleeve whirl from claims. Id.
- Specification of "increased" curvature where no degree specified.  
[71 Fed. 961; 33 U. S. App. 340, 370, 371] 18: 398
- So describing lumber drying kiln that construction from plans and specifications easy though wrong rule of physics stated. [99 Fed. 737] 40: 87
- For product or composition of matter, necessity of identifying.  
[78 Fed. 910; 45 U. S. App. 473, 557] 24: 384
- Failure to sufficiently describe solution of acid.  
[71 Fed. 179; 39 U. S. App. 11] 18: 31
- Requisites of description of coloring compound.  
[78 Fed. 910; 45 U. S. App. 473, 557] 24: 384
- Omission from description of specific process for coloring compound, of express direction for a second diazotization. Id.
- Use of "nitrate" of sodium for "nitrite" in specifications of patent for coloring compound. Id.
- Specifications for color compound, stating that any sulpho acids of any radical would produce compound. Id.

**Amendment of specification.**

See also *infra*, XII.

- Changing phraseology in claims which remains substantially the same.  
[69 Fed. 958; 28 U. S. App. 525] 16: 569
- Introducing new matter. [67 Fed. 121; 31 U. S. App. 462] 14: 232
- Enlarging beyond original scope without further oath.  
[66 Fed. 765; 24 U. S. App. 649] 14: 77  
[70 Fed. 58; 28 U. S. App. 470] 16: 632
- Enlarging with a view of obtaining series of overlapping patents.  
[52 Fed. 130; 1 U. S. App. 320] 2: 682
- Made with reference to another patent issued while application pending.  
[58 Fed. 186; 18 U. S. App. 177] 7: 164
- Omitting provision in final amendment of claim, ineffective.  
[70 Fed. 58; 28 U. S. App. 470] 16: 632

**Disclaimer.**

See also *infra*, XII.

Rules for determining meaning of.

- [82 Fed. 737; 48 U. S. App. 691] 27: 377  
[92 Fed. 155; 48 U. S. App. 691] 34: 267
- Must be of some material or substantial part of thing patented.  
[96 Fed. 850] 37: 593
- Must be read in connection with original specifications.  
[92 Fed. 155; 48 U. S. App. 691] 34: 267

**PATENTS—continued.**

- Failure to file immediately on introduction of evidence of anticipation as to certain features of claim, not unreasonable delay. [96 Fed. 238] 37: 456
- Of anything new in any element, by claim for combination. [66 Fed. 318; 31 U. S. App. 123] 13: 494
- Of all combinations and improvements not distinctly claimed. [65 Fed. 804; 27 U. S. App. 693] 13: 143
- Of broad claims not include narrower claims. [92 Fed. 155; 48 U. S. App. 691] 34: 267
- Of broad claims, effect on narrower claims included in language of broad claims. [82 Fed. 737; 48 U. S. App. 691] 27: 377
- Amendment so as to leave out broad claims and limit claim to improvements only, disclaimer as to broad claims. [90 Fed. 415; 61 U. S. App. 291] 33: 141
- By acquiescing in rejection of broad claims and limiting claim to improvements only. Id.
- Estoppel by surrendering something subsequently claimed to obtain that allowed. [94 Fed. 524] 36: 375
- Of recital designed to enlarge scope of patent, effect of. [66 Fed. 152; 26 U. S. App. 547] 13: 380
- Failure to put in evidence structures on which prior patent admitted, effect of, on disclaimer. [69 Fed. 958; 28 U. S. App. 525] 16: 569
- Attempt to incorporate new feature into claim for combination by disclaimer after issuance of patent. [79 Fed. 966; 51 U. S. App. 164] 25: 258
- No new element added by disclaimer as to particular kinds of saws. [96 Fed. 238] 37: 456

**Different patents.**

- Right to elect between. [52 Fed. 130; 1 U. S. App. 320] 2: 682
- Different patents for different inventions in same machine. [71 Fed. 396; 38 U. S. App. 55] 18: 145
- Ten patents to same person for same inventions. [69 Fed. 94; 34 U. S. App. 90] 16: 154
- Canceling second patent where inventions not clearly same. [68 Fed. 542; 33 U. S. App. 236] 15: 569

**X. DELAY IN PATENT OFFICE.**

- Diligence required in pressing application to speedy issue. [68 Fed. 542; 33 U. S. App. 236] 15: 569
- Delay due to commissioner's error of judgment. Id.
- Unlawful purpose in not pressing application in patent office. Id.
- Acquiescing in delays of patent office prolonging monopoly. Id.
- Canceling patent for fraud from delay of patent office. Id.
- Burden of proving that action of patent office might have been hastened. Id.

**XI. REISSUE.****In general.**

- What must appear to warrant exercise of power of commissioner in granting. [58 Fed. 227; 16 U. S. App. 78] 7: 197
- To correct error in single word in specifications. [92 Fed. 657] 34: 606
- Promptly applied for, because of inadvertence or mistake in drawings or specifications. [92 Fed. 146; 63 U. S. App. 626] 34: 248
- Validity, effect of delay in applying for. [76 Fed. 816; 40 U. S. App. 362] 22: 586
- When not void for lapse of time after issuance of original. [86 Fed. 124; 57 U. S. App. 200] 29: 607
- Reissue, identity of invention. [81 Fed. 854; 48 U. S. App. 494] 26: 642

**PATENTS—continued.**

- Reissued patent taken out to secure different invention.  
[58 Fed. 227; 16 U. S. App. 78] 7: 197
- Cooking stove, Boal's reissue, employment of same construction at different place.  
[84 Fed. 182; 54 U. S. App. 389] 28: 317
- Car coupler, Lorraine & Aubin's confined to precise form shown in specifications and drawings.  
[87 Fed. 885; 57 U. S. App. 310] 31: 265
- Making essential element of invention subject of subsequent patent.  
[90 Fed. 732; 62 U. S. App. 651] 33: 255
- When commissioner's decision authorizing reissue conclusive.  
[92 Fed. 146; 63 U. S. App. 626] 34: 248
- Upon what questions and to what extent reissue conclusive.  
[58 Fed. 227; 16 U. S. App. 78] 7: 197
- Review of decision as to inadvertence, etc., authorizing.  
[57 Fed. 631; 14 U. S. App. 632] 6: 487

**Enlargement of claim.**

- Enlargement of claim, what constitutes.  
[52 Fed. 228; 3 U. S. App. 227] 3: 53
- Enlarging claim, rendering reissue invalid. Id.
- Straw braid, improvement in machine for sewing, void as covering invention not in original patent.  
[60 Fed. 82; 20 U. S. App. 301] 8: 476
- Reissue after long delay, new invention. Id.
- Enlargement of claims covering new device invented and placed on market in meantime by another.  
[85 Fed. 968; 53 U. S. App. 723] 29: 506
- Soda water apparatus to Park as assignee of Herron, enlargement of claims. Id.
- For nonconducting covering for boilers and pipes, enlargement rendering reissue void.  
[52 Fed. 228; 3 U. S. App. 227] 3: 53
- Insertion of claims deliberately omitted from original.  
[85 Fed. 968; 53 U. S. App. 723] 29: 506
- For ventilator and combined ventilator and refrigerator car not invalid for expansion of invention originally described.  
[92 Fed. 155; 48 U. S. App. 691] 34: 267
- For electrical fixtures, Stieringer's void as not supported by claims and specifications of original patent.  
[91 Fed. 665; 62 U. S. App. 528] 34: 45
- Not authorized by adding to old combination device from prior art.  
[93 Fed. 972] 36: 38
- On adjudging original void twelve years after granted, during which time patents for similar devices granted.  
[91 Fed. 665; 62 U. S. App. 528] 34: 45
- Pumps, improvement in, Bean's void for laches, enlarging claim to include subsequent construction.  
[76 Fed. 816; 40 U. S. App. 362] 22: 586
- Stove, Myers's reissue, broadening of claims of original, Browne's patent issued between date of original and reissue.  
[81 Fed. 854; 48 U. S. App. 494] 26: 642
- Target traps, Moore's, including invention covered by patent issued after original patent.  
[58 Fed. 227; 16 U. S. App. 78] 7: 197
- Pneumatic tires, Dunlop's, invalid, as seeking to broaden original invention by omitting element.  
[57 Fed. 631; 14 U. S. App. 632] 6: 487
- Rights of one making device covered by reissue but not by original patent.  
[85 Fed. 968; 53 U. S. App. 723] 29: 506

**XII. CONSTRUCTION; EXTENT OF CLAIMS.****In general.**

- Commercial success not considered. [63 Fed. 611; 21 U. S. App. 428] 11: 355
- Enlarging by construction. [53 Fed. 118; 9 U. S. App. 220] 3: 469
- Construction, in light of description, drawings, and state of art.  
[64 Fed. 594; 24 U. S. App. 460] 12: 319



**PATENTS—continued.**

- Reference to claims, specifications, and drawings, for construction.  
[49 Fed. 859; 7 U. S. App. 103] 1: 452
- Not so broadly construed as to give monopoly in particular industry.  
[67 Fed. 790; 33 U. S. App. 188] 14: 646
- Reading together separate patents for umbrella and umbrella case.  
[77 Fed. 469; 39 U. S. App. 369] 23: 246
- To be construed by terms in which expressed, except as limited by the prior art.  
[80 Fed. 293; 53 U. S. App. 104] 25: 426
- Attempt to restrict to scope of inventor's understanding of device. Id.
- Strict construction of narrow claim for patent to which patentee adhered after different claims suggested. [100 Fed. 93] 40: 289
- Claim restricted to process, construction to cover product.  
[61 Fed. 819; 17 U. S. App. 620] 10: 97
- Patentee bound by language of patent negating application to specified process.  
[79 Fed. 801; 51 U. S. App. 22] 25: 196
- Including, in claim for patent for lubricating device, particular machine on which to use same. [89 Fed. 491; 60 U. S. App. 610] 32: 260
- Design patent, black and white drawings illustrating designs.  
[84 Fed. 1019; 50 U. S. App. 351] 28: 653

**Limiting by language of claims, specifications, and drawings.**

- Limiting by language of claims and specifications.  
[73 Fed. 301; 38 U. S. App. 457] 19: 505
- Restricting patent to claim asserted.  
[64 Fed. 594; 24 U. S. App. 460] 12: 319
- Limiting to precise details shown.  
[58 Fed. 367; 69 Fed. 841; 14 U. S. App. 709] 13: 687
- To mechanical details described.  
[66 Fed. 313; 26 U. S. App. 605] 13: 491
- To specific structure described. [64 Fed. 599; 29 U. S. App. 125] 12: 324
- Confining rights to special means of performing function.  
[70 Fed. 816; 25 U. S. App. 475] 17: 430
- To particular forms of construction described.  
[67 Fed. 930; 34 U. S. App. 19] 15: 84
- Limited to precise form and arrangement of parts described, when one of series of improvements having same general purpose.  
[52 Fed. 205; 6 U. S. App. 200] 3: 32
- To specific form of hook described. [67 Fed. 596; 28 U. S. App. 414] 14: 560
- To particular shape of cork described.  
[66 Fed. 765; 24 U. S. App. 649] 14: 77
- Patent for "toy locomotive" limited to toys.  
[64 Fed. 594; 24 U. S. App. 460] 12: 319
- Limiting to particular form of belt for cigarette machine.  
[73 Fed. 834; 38 U. S. App. 596] 20: 58
- To wooden pulley divided into two sections.  
[74 Fed. 241; 24 U. S. App. 270] 20: 415
- Limiting claim to particular form of opinion described.  
[66 Fed. 318; 31 U. S. App. 123] 13: 494
- "Improvement in burglar-proof safes," not cover locking device in jail case.  
[61 Fed. 209; 23 U. S. App. 341] 9: 451
- Lifting jack not cover horizontal motion.  
[59 Fed. 772; 17 U. S. App. 435] 8: 261
- Meaning of word "automatically;" method of throwing out hooks of car coupler.  
[74 Fed. 794; 38 U. S. App. 702] 21: 97
- Claim describing shaft as connected with piston, "to operate the same" and "to operate the same and be operated thereby."  
[75 Fed. 674; 38 U. S. App. 608] 21: 495

**PATENTS—continued.**

- Limiting by use of words "strong" and "diluted," in referring to acid.  
[71 Fed. 179; 39 U. S. App. 11] 18: 31
- Meaning of phrase "substantially as set forth," used in claim.  
[70 Fed. 816; 25 U. S. App. 475] 17: 430
- Enlarging or narrowing claim by phrase "substantially as described."  
[72 Fed. 920; 33 U. S. App. 421] 19: 237
- Retention of form given in specifications and drawings.  
[75 Fed. 835; 33 U. S. App. 551] 21: 533
- Particular angle of cutterhead knives shown by drawings alone.  
[66 Fed. 305; 24 U. S. App. 617] 13: 452
- Different forms of invention shown by drawings and specifications numbered alike.  
[72 Fed. 671; 43 U. S. App. 10] 19: 67
- Matters only incidentally referred to in specifications.  
[63 Fed. 588; 28 U. S. App. 1] 11: 342
- When reference letters insufficient to limit claims to exact forms of device.  
[77 Fed. 621; 47 U. S. App. 189] 23: 357
- Reference to letter in drawing, geometrical shape shown in drawing.  
[58 Fed. 414; 20 U. S. App. 14] 7: 279
- Use of letters in claim to designate element, liberal construction.  
[82 Fed. 428; 54 U. S. App. 267] 27: 200
- Not limited to specific claim made, where patent not granted on that ground.  
[94 Fed. 524] 36: 375
- Limiting by provision in all claims, except final amendment.  
[70 Fed. 58; 28 U. S. App. 470] 16: 632

**Referring to claim or specification to aid claim.**

- Aiding obscure claims by specifications.  
[84 Fed. 182; 54 U. S. App. 389] 28: 317
- Resorting to specification to arrive at better understanding of ambiguous claim.  
[87 Fed. 225; 58 U. S. App. 53] 30: 617
- General language pointing to element or device more fully described in specification.  
[77 Fed. 432; 40 U. S. App. 482] 23: 223
- Enlarging meaning of word by reference to specifications.  
[80 Fed. 395; 50 U. S. App. 52] 25: 500
- General language of claim limited by specific description in specification made part of.  
[90 Fed. 666; 62 U. S. App. 276] 33: 213
- Specification made part of claim by words "substantially as set forth." Id.
- Device mentioned in specification as preferred form of construction, not read into claim by words "substantially as described."  
[87 Fed. 225; 58 U. S. App. 53] 30: 617

**Effect of rejection or amendment of claims.**

See also *supra*, IX.

- Of claims allowed, entitling to benefit of claims rejected.  
[89 Fed. 297; 60 U. S. App. 338] 32: 205
- Strict and narrow construction, after amendment.  
[53 Fed. 819; 3 U. S. App. 386] 4: 28
- Effect of abandonment of application for reissue.  
[69 Fed. 371; 37 U. S. App. 299] 16: 259
- Effect of rejection and abandonment of broader claims.  
[52 Fed. 205; 6 U. S. App. 200] 3: 32
- Striking out call for mechanical equivalents, not operate as abandonment of.  
[91 Fed. 792; 63 U. S. App. 56] 34: 86
- Adopting narrower language, effect of.  
[67 Fed. 137; 26 U. S. App. 697] 14: 241  
[70 Fed. 833; 44 U. S. App. 118] 17: 447
- Limited by narrower language used in amendment. Id.

**PATENTS—continued.**

- Claim limited by amendments made to meet objections.  
[70 Fed. 833; 44 U. S. App. 118] 17: 447
- Amendment to meet objections of patent office deprives of benefit of original claims.  
[90 Fed. 666; 62 U. S. App. 276] 33: 213
- Insertion of specific details of broad claims, resulting restriction.  
[58 Fed. 818; 5 U. S. App. 588] 7: 498
- Withdrawal of original specifications after rejection of application limits to specific invention in amended specifications.  
[87 Fed. 742; 56 U. S. App. 739] 31: 215
- Effect of withdrawing claim for element subject of interference.  
[61 Fed. 945; 17 U. S. App. 555] 10: 181
- Effect of rejection of claim and its amendment on doctrine of equivalents.  
[61 Fed. 958; 21 U. S. App. 244] 10: 194
- Construction securing matters withdrawn from application.  
[85 Fed. 271; 54 U. S. App. 723; 46 L. R. A. 122] 29: 141
- Limitation of scope of patent by, matter of interpretation and construction of terms used.  
[97 Fed. 87] 38: 56
- Nor construed so as to include by implication the rejected claims.  
[58 Fed. 196; 18 U. S. App. 229] 7: 174
- So as to cover method of construction, utility of which explicitly denied in amendment of claim.  
[97 Fed. 87] 38: 56
- Patentee not entitled to construction making amended claims as broad as original claims abandoned.  
[90 Fed. 666; 62 U. S. App. 276] 33: 213
- Qualifying effect of acquiescence in limitations.  
[77 Fed. 420; 47 U. S. App. 125] 23: 211
- Limiting by action of patent office and patentee's acquiescence.  
[73 Fed. 301; 38 U. S. App. 457] 19: 505
- Acquiescence in rejection of claim, insistence that essential feature covered by substituted claim.  
[77 Fed. 835; 46 U. S. App. 608] 23: 488
- Estoppel by acquiescing in rejection of claim covering one feature of invention and filing substituted claim.  
[97 Fed. 964] 38: 587
- Patentee's acquiescence in commissioner's requirement that different mechanisms combined be limited by words "substantially as described."  
[92 Fed. 146; 63 U. S. App. 626] 34: 248
- Patentee and privies no right to benefit of claims rejected.  
[89 Fed. 297; 60 U. S. App. 338] 32: 205

**Scope and character of invention.**

- Broadening claim so as to cover something not responding to form and letter of patent.  
[98 Fed. 892] 39: 332
- Close construction of claim covering mere details of construction.  
[71 Fed. 961; 33 U. S. App. 340, 370, 371] 18: 398
- Claim for novel and useful invention, liberally construed, although unskillfully drawn.  
[82 Fed. 432; 53 U. S. App. 478] 27: 204
- Liberal construction to machine of unusual merit.  
[64 Fed. 799; 28 U. S. App. 146] 12: 422
- Broad construction of patent as meritorious and ingenious invention.  
[93 Fed. 206; 60 U. S. App. 451] 35: 269
- Liberal construction to patent, as pioneer invention.  
[63 Fed. 962; 26 U. S. App. 248] 11: 528
- Pioneer entitled to generic claim, and to one or more specific claims for specie of the genus.  
[80 Fed. 121; 48 U. S. App. 120] 25: 323
- Patents for pioneer inventions, rule governing.  
[69 Fed. 371; 37 U. S. App. 299] 16: 259
- Pioneer invention not limited to precise mechanical means described.  
[63 Fed. 962; 26 U. S. App. 248] 11: 528
- Jump seat construed as not pioneer invention.  
[63 Fed. 607; 21 U. S. App. 443] 11: 351

**PATENTS—continued.**

- Narrow, of machine not a pioneer or specially meritorious.  
[64 Fed. 599; 29 U. S. App. 125] 12: 324
- Machine not entitled to broad construction, as primary invention.  
[64 Fed. 851; 26 U. S. App. 421] 12: 442
- Liberal construction to patent as primary invention.  
[69 Fed. 371; 37 U. S. App. 299] 16: 259
- No elimination of restrictions imposed by language of claims, though invention of primary character.  
[61 Fed. 284; 20 U. S. App. 636] 9: 507
- Use of reference letters, where invention of primary and pioneer character.  
[69 Fed. 371; 37 U. S. App. 299] 16: 259

**Mechanical equivalents.**

- Embracing matter not pointed out as new.  
[66 Fed. 318; 31 U. S. App. 123] 13: 494
- Mechanical equivalent of article mentioned, included.  
[66 Fed. 152; 26 U. S. App. 547] 13: 380
- Range wider in inventions of specific devices than in case of combinations.  
[66 Fed. 318; 31 U. S. App. 123] 13: 494
- Means which perform function not contemplated. Id.
- Adjustment of pump plunger of hot-air engine.  
[58 Fed. 414; 20 U. S. App. 14] 7: 279

**Enlarging claim.**

- Right to enlarge claim by dispensing with elements carried in by reference letters.  
[77 Fed. 621; 47 U. S. App. 189] 23: 357
- Importing into claim for brake shoe with extremities chill hardened, particular method by which hardening produced.  
[99 Fed. 1004] 40: 215
- Enlarging scope by substituting "intermediate" for "loose or sliding device."  
[64 Fed. 384; 22 U. S. App. 601] 12: 174
- Including parts or elements not enumerated in claims, though shown by specifications and drawings.  
[97 Fed. 217] 38: 123
- Device described in specifications and in some of claims, but not in others, not considered essential elements of mechanism in latter claims.  
[100 Fed. 455] 40: 486

**Results.**

- Legitimate results covered, although not foreseen.  
[65 Fed. 427; 28 U. S. App. 275] 12: 671
- Results, effects, or advantages achieved by structure and mode of operation, although not understood.  
[72 Fed. 67; 37 U. S. App. 555, 689] 19: 13

**Referring to other claim.**

- Reading feature of construction in one claim into other claim.  
[92 Fed. 167] 34: 280
- Express limitation in one claim as negating constructive limitation in another.  
[59 Fed. 776; 19 U. S. App. 360] 8: 265
- Supplementing statement of general principles and requisite features by more particular description in another claim.  
[85 Fed. 662; 50 U. S. App. 314] 29: 386

**Features not mentioned in claim, etc.**

- Estoppel as to devices, combinations, and improvements apparent from specification and claims, for which no claims made.  
[97 Fed. 217] 38: 123
- Unclaimed peculiarity of construction not read into claim.  
[64 Fed. 789; 26 U. S. App. 388] 12: 418
- Right to rely on feature not mentioned in claim to sustain the same.  
[80 Fed. 528; 53 U. S. App. 66] 25: 613
- Reading into claims parts not named, to make out novelty.  
[85 Fed. 218; 54 U. S. App. 591] 29: 121
- Construing so as to include feature not mentioned in specifications.  
[67 Fed. 121; 31 U. S. App. 462] 14: 232

**PATENTS—continued.**

Scrutinizing patentee's failure to refer, in specification or claims, to special feature subsequently claimed to be important. [95 Fed. 982] 37: 346

Extending, to cover new function discovered after issue. [75 Fed. 835; 33 U. S. App. 551] 21: 533

Function afterward developed, use of, to broaden construction of claim. [82 Fed. 449; 50 U. S. App. 180] 27: 316

**Combinations.**

Claim for combination implies elements old. [63 Fed. 588; 28 U. S. App. 1] 11: 342  
[71 Fed. 411; 34 U. S. App. 498] 18: 157

Claim for combination, disclaimer of anything new in any element. [66 Fed. 318; 31 U. S. App. 123] 13: 494

Implication that patentee did not claim elements separately where claims for combination only. [87 Fed. 885; 57 U. S. App. 310] 31: 265

When patent for combination, only separate elements not included, within monopoly. [78 Fed. 346; 42 U. S. App. 314] 24: 128

Restricting to specific combination described. [67 Fed. 790; 33 U. S. App. 188] 14: 646

Confining to precise form described. [69 Fed. 1002; 32 U. S. App. 589] 16: 581  
[73 Fed. 682; 38 U. S. App. 483] 19: 644

Restricting claims to precise form and arrangement of parts described in specifications. [53 Fed. 819; 3 U. S. App. 386] 4: 28

Limited to specific devices making up element of combination. [66 Fed. 318; 31 U. S. App. 123] 13: 494

Patent consisting of combination of old elements entitled to very limited application of the doctrine of equivalents. [99 Fed. 90] 39: 426

Narrowing range of equivalents allowable to combination of old elements so as to include nothing not substantially identical with means used by patentee. Id.

Limiting to specific combination described in other claim. [72 Fed. 171; 33 U. S. App. 417] 18: 502

Narrow construction of combination, wire-weaving shuttle. [67 Fed. 790; 33 U. S. App. 188] 14: 646

Claims, functional in form, construed as for combination of devices performing function. [64 Fed. 384; 22 U. S. App. 601] 12: 174

Limiting to one only of obviously beneficial functions of combination. [72 Fed. 67; 37 U. S. App. 555, 689] 19: 13

Article manufactured in machine as part of machine, so as to constitute element in combination. [83 Fed. 700; 42 U. S. App. 617] 28: 18

Meaning of word "centered" in claim for combination with wheeled vehicle of electric dynamic motor. [88 Fed. 82; 58 U. S. App. 700] 31: 391

**Particular patents.**

Advertising rack for street cars, Randall's, narrowly construed. [88 Fed. 795; 50 U. S. App. 425] 32: 122

Air brakes, Dixon's not entitled to construction as primary invention. [96 Fed. 991] 37: 649

Air brakes, Park's, not so construed as to include various devices actuating emergency valve. [63 Fed. 962; 26 U. S. App. 248] 11: 528

Air brakes, Westinghouse's description defective in claiming only result, which is public property. [70 Fed. 816; 25 U. S. App. 475] 17: 430

Air brakes, Westinghouse's, limited to piston attached to or moved by brake cylinder piston. [96 Fed. 991] 37: 649

Air brakes, Westinghouse's, not of primary character. Id.

Air brakes, Westinghouse's pioneer invention, and claims not limited to precise mechanical means described in specifications. [63 Fed. 962; 26 U. S. App. 248] 11: 528

"Anti-rattler" for thill couplings, Blair's, limited to device described. [80 Fed. 151; 53 U. S. App. 181] 25: 322

## PATENTS—continued.

- Bag or satchel frame, Roemer's limited by prior state of art.  
[81 Fed. 380; 39 U. S. App. 719] 26: 440
- Bail ear for pail, McDonnell's, limited by language of claim and by prior state of art.  
[67 Fed. 143; 28 U. S. App. 360] 14: 245
- Baling presses, Gehrt's, narrowly construed.  
[51 Fed. 233; 1 U. S. App. 222] 2: 169
- Band-saw mills, combination, Smith's, limited to construction shown.  
[62 Fed. 444; 15 U. S. App. 577] 10: 403
- Bicycle bell, Ericson's, limited to precise construction shown.  
[98 Fed. 892] 39: 332
- Boot and shoe shank, Rice's, limited by reference to specification.  
[62 Fed. 393; 21 U. S. App. 376] 10: 440
- Bottles and corks, De la Vergne's, limited to cork conical in form before insertion.  
[66 Fed. 765; 24 U. S. App. 649] 14: 77
- Box machine, Beach's, elements of combination entitled to broad range of equivalents.  
[92 Fed. 146; 63 U. S. App. 626] 34: 248
- Breaking carts, Putnam's, limited to specific invention described in amended specifications.  
[87 Fed. 742; 56 U. S. App. 739] 31: 215
- Breaking carts, Putnam's, what covered by claim for metal straps with ends secured to cart shafts.  
[67 Fed. 542; 29 U. S. App. 572] 14: 517
- Brooms, Bradshaw & Richardson's, and Bradshaw's, limited to precise form and combinations shown.  
[80 Fed. 732; 48 U. S. App. 304] 26: 125
- Buttonhole machine, Reece's, doctrine of equivalents applied.  
[61 Fed. 958; 21 U. S. App. 244] 10: 194
- Can-crimping machine, Gordon's, construed narrowly, as not a pioneer in the art or specially meritorious.  
[64 Fed. 599; 29 U. S. App. 125] 12: 324
- Can-crimping machine, Gordon's, limited to specific structure shown. Id.
- Can-ending machine, combination, Norton's, entitled to broad and liberal construction.  
[49 Fed. 859; 7 U. S. App. 103] 1: 452
- Can-heading machine, combination, Norton's broadening amended claim so as to drop out element included in same.  
[70 Fed. 833; 44 U. S. App. 118] 17: 447
- Can-heading machine, combination, Norton's, not for primary invention.  
[90 Fed. 415; 61 U. S. App. 291] 33: 141
- Can-heading machine, combination, Norton's, narrowly construed, and confined to particular combination described. Id.
- Can-making machine, Hipperling's, limited to particular form of construction shown.  
[92 Fed. 369; 63 U. S. App. 307] 34: 413
- Can-making machine, combination, Leavitt's, limited to particular elements described in specifications, or known equivalents therefor.  
[67 Fed. 236; 29 U. S. App. 248] 14: 383
- Can-making machine, Norton's, limited to specific devices shown. Id.
- Car axle box lids, Morris's, limited by the prior art, especially Kinzer patent.  
[81 Fed. 407; 39 U. S. App. 664] 26: 460
- Cash register, combination, Campbell's for pioneer invention.  
[53 Fed. 367; 3 U. S. App. 340] 3: 559
- Castings, Wittenstrom's invention of primary character.  
[90 Fed. 829; 58 U. S. App. 778] 33: 387
- Castings, Wittenstrom's, not confined to remelting process. Id.
- Castings, Wittenstrom's, not limited to articles to which ultimate form given in mold. Id.
- Celluloid manufactures, Hyatt's, invention of primary character, entitled to liberal construction.  
[52 Fed. 740; 3 U. S. App. 287] 3: 269
- Chairs, adjustable, combination, Boscawen's, limited to specific device.  
[57 Fed. 489; 5 U. S. App. 454] 6: 458
- Cigarette-machine belt, Emery's, limited to belt of tubular form.  
[73 Fed. 834; 38 U. S. App. 596] 20: 58

## PATENTS—continued.

- Corks, De la Vergne's, limited to cork conical in form before insertion.  
[66 Fed. 765; 24 U. S. App. 649] 14: 77
- Cotton-cleaning apparatus, combination, Munger's, limited to specific devices used or suggested.  
[49 Fed. 61; 2 U. S. App. 55] 1: 158
- Creaming milk, process of, Houston & Thomson's, limited to process described in patent.  
[84 Fed. 881; 55 U. S. App. 602] 28: 555
- Cuff fasteners, Frank's, limited to specific form of hook described in amended claim.  
[67 Fed. 596; 28 U. S. App. 414] 14: 560
- Cultivator coupling, combination, Brown's, limited to particular form of construction described.  
[61 Fed. 972; 18 U. S. App. 647] 10: 208
- Curtain rods, combination, Fowler, Lingley, & Fowler's, claim read with statement in specification.  
[61 Fed. 821; 26 U. S. App. 106] 10: 100
- Cutterhead knives, Caverley's resting invention on particular degree of angularity shown by drawings.  
[66 Fed. 305; 24 U. S. App. 617] 13: 452
- Disc harrows, Clark's, limited to particular construction described.  
[80 Fed. 534; 53 U. S. App. 166] 25: 619
- Double-acting force pumps, specification of one class as exclusion of other.  
[82 Fed. 432; 53 U. S. App. 478] 27: 204
- Double carbon electric lamp, Brush's, limited to mechanism of which essential feature dissimultaneous initial separation of carbons.  
[76 Fed. 761; 46 U. S. App. 355] 22: 543
- Dress forms, Hall's, limited to specific device shown in specifications.  
[55 Fed. 79; 5 U. S. App. 296] 5: 47
- Driving chains, Dodge's, liberal construction.  
[81 Fed. 390; 39 U. S. App. 735] 26: 443
- Dry closets, Smead's, ventilating ducts cannot be omitted.  
[67 Fed. 626; 14 U. S. App. 578] 6: 481
- Dyestuff manufacture, Koechlin's covers process alone, and not product.  
[61 Fed. 819; 17 U. S. App. 620] 10: 97
- Dynamo electric machines, Scribner and Warner's limited by prior state of art.  
[84 Fed. 654; 55 U. S. App. 630] 28: 512
- Electric gas-lighting apparatus, Tirrell's, restricted to mere mechanical details.  
[59 Fed. 1003; 21 U. S. App. 3] 8: 442
- Electric-lighting gas burner, meaning of "electrode," as used in claim.  
[51 Fed. 754; 7 U. S. App. 239] 2: 495
- Electric-light switch, Perkins's, limited to mechanical details described.  
[66 Fed. 313; 26 U. S. App. 605] 13: 491
- Electric motors, combination, Adams's, general language in claim limited by fuller description in specification.  
[77 Fed. 432; 40 U. S. App. 482] 23: 223
- Electric railway, Green's, limited by prior state of the art.  
[92 Fed. 614] 34: 570
- Electric railway, Green's, piecing out by reference to art. Id.
- Electric railway devices, Van Depoele's includes by implication, means for maintaining contact device, and conductor in normal working relations.  
[86 Fed. 636; 58 U. S. App. 13] 30: 313
- Electric-railway motors, Sprague's, not pioneer or broad invention, but clearly defined one.  
[88 Fed. 82; 58 U. S. App. 700] 31: 391
- Electric-railway signalling apparatus, Gassett's, limited to specific purpose sought to be accomplished.  
[96 Fed. 761] 37: 580
- Electric-railway signalling apparatus, Gassett's, not entitled to broad construction as pioneer invention. Id.
- Electric track circuit connector, Gassett & Fisher's, limited to precise construction shown. Id.
- Elevator operation, device for controlling, Reynolds's, entitled to reasonably liberal construction.  
[71 Fed. 876; 39 U. S. App. 95] 18: 375
- Excavator, meaning of terms "inward delivery."  
[80 Fed. 121; 48 U. S. App. 120] 25: 323

## PATENTS—continued.

- Expansion rubber buckets for chain pumps, construing so as to include rejected claims. [58 Fed. 196; 18 U. S. App. 229] 7: 174
- Eyeglass case, Warren's, limited by prior state of art to particular device described. [93 Fed. 963] 36: 29
- Feed water, heating and purifying machine, Stilwell's, not limited to exact combination described. [57 Fed. 731; 16 U. S. App. 234] 6: 528
- Filtering compound, Chamberland's, covers substitution of fine sand for porcelain earth. [53 Fed. 98; 6 U. S. App. 335] 3: 455
- Firecrackers, combination, presumption of novelty applies to combination as a whole. [55 Fed. 78; 5 U. S. App. 289] 5: 42
- Folding machine, Crowell's, not cover process, but is for mechanism for producing folding operation. [70 Fed. 781; 28 U. S. App. 636] 17: 410
- Garment hooks, improvement in, limited to form of hooks shown and described. [76 Fed. 976; 39 U. S. App. 311] 22: 669
- Gas-generating fixtures, Williams's, limited by amendments of claim. [97 Fed. 87] 38: 56
- Glass-annealing furnaces, combination, Tondeur's, bars described in specifications above floor. [55 Fed. 390; 14 U. S. App. 245] 5: 148
- Glove fasteners, Kraetzer's, restricted by proceedings in patent office to precise details described. [58 Fed. 818; 5 U. S. App. 588] 7: 498
- Glove fasteners, Richardson's, limited to precise form shown. [96 Fed. 489] 37: 523
- Hay-baling presses, Knight, Kelly, & Alderson's, narrow construction, in view of prior state of art. [84 Fed. 463; 49 U. S. App. 569] 28: 464
- Hay-elevator tracks, Ney's, limited by prior state of art to exact forms shown. [69 Fed. 405; 37 U. S. App. 371] 16: 293
- Heaters and feeders for steam boilers, De Beaumont's, limited by prior state of art. [80 Fed. 995; 39 U. S. App. 697] 26: 298
- Hide and skin unhairing and scouring machine, combination, McDonald's, not entitled to broad range of equivalents. [63 Fed. 611; 21 U. S. App. 428] 11: 355
- Hide dressing machine, Rood & Vaughan's, limited by prior art to precise construction shown. [99 Fed. 990] 40: 209
- Hydraulic dredging machines, Bower's, entitled to broad and liberal construction as pioneers. [80 Fed. 121; 48 U. S. App. 120] 25: 323
- Iron building construction, combination, Buffington's, limited to laminated posts described in specifications. [65 Fed. 804; 27 U. S. App. 693] 13: 143
- Jump seats, combination, not pioneer invention. [63 Fed. 607; 21 U. S. App. 443] 11: 351
- Laundry dampening machines, Wendell & Wiles's, limited to thin textile covering of rollers without thick felt covering. [73 Fed. 301; 38 U. S. App. 457] 19: 505
- Lawn sprinkler, rotary, application of technical rule to narrow scope. [82 Fed. 428; 54 U. S. App. 267] 27: 200
- Leather cutting machine, Parson's combination. [100 Fed. 455] 40: 486
- Lifting jacks, Jenne & Harmon's, limited to specific elements named. [53 Fed. 118; 9 U. S. App. 220] 3: 469
- Lifting jacks, Mosher's for improvements only, and not new machine. [51 Fed. 441; 6 U. S. App. 107] 2: 322
- Locomotive headlights, Wilhelm's, limited to reflector having separate opening near apex. [50 Fed. 931; 1 U. S. App. 218] 2: 83
- Magneto-electric machines, Smith's, limited by language in amended claim. [67 Fed. 137; 26 U. S. App. 697] 14: 241
- Mechanical fit valve, combination, claim not confined to valve having knife-edged bearing. [60 Fed. 93; 20 U. S. App. 268] 8: 485



## PATENTS—continued.

- Metal-cutting saw, Thompson's, limited by language of specifications to saws in which the temper practically coincident with base line of teeth.  
[75 Fed. 572; 35 U. S. App. 342] 21: 486
- Metallic ceilings, Northrop's, limited to ceiling of panels.  
[51 Fed. 685; 3 U. S. App. 186] 2: 455
- Metal-mixing process, Jones's, limited to process of mixing nonuniform charges of metal.  
[96 Fed. 850] 37: 593
- Miter cutting machines, Fox's, limited to precise form and arrangement of parts described in specifications.  
[52 Fed. 205; 6 U. S. App. 200] 3: 32
- Paper-bag machines, Lorenz and Honiss's, not pioneer invention.  
[56 Fed. 224; 5 U. S. App. 327] 5: 490
- Paper-box machines, Cushman's, limited in view of prior state of art, to specific form of mechanism shown.  
[95 Fed. 664] 37: 221
- Paper file, combination, Shannon's, limited to precise element shown, or their mechanical equivalents.  
[77 Fed. 465; 43 U. S. App. 798] 23: 242
- Photographic apparatus, Walker & Eastman's, meaning of term "acting to maintain the film in a tense condition during exposure."  
[64 Fed. 491; 21 U. S. App. 574] 12: 603
- Pneumatic tire, combination, Brown & Stillman's, limited by reading into claim supplemental groove shown by drawings, though omitted from amended claim.  
[70 Fed. 58; 28 U. S. App. 470] 16: 632
- Radiators, design for, Prentice's, limited to precise drawing shown.  
[79 Fed. 993; 26 U. S. App. 781] 25: 676
- Railway switches, Brahn's, restricted, in view of prior art, to particular devices, substantially as described.  
[90 Fed. 493; 61 U. S. App. 457] 33: 619
- Relief apparatus for beer barrels, automatic, combination, consisting of two elements.  
[60 Fed. 93; 20 U. S. App. 268] 8: 485
- Riding attachment for plows, McBride's combination for.  
[97 Fed. 217] 38: 123
- Road carts, Miller's, restricted, by prior state of art, to combinations of longitudinal springs, to precise form shown.  
[73 Fed. 682; 38 U. S. App. 483] 19: 644
- Road graders, combination, Welch's, limited by prior state of art.  
[86 Fed. 646; 57 U. S. App. 428] 30: 320
- Rowlocks, Davis's, construed closely as covering mere details of construction.  
[71 Fed. 961; 33 U. S. App. 340, 370, 371] 18: 398
- Rubber mats, design for, limited to specific design shown in drawing.  
[53 Fed. 810; 11 U. S. App. 637] 4: 21
- Rubber waste, process of treating, Mitchell's, limited by language of specifications to use of strong, undiluted, sulphuric acid of commerce.  
[71 Fed. 179; 39 U. S. App. 11] 18: 31
- Safety valves, Ashton's, use of ventholes not covered.  
[52 Fed. 314; 8 U. S. App. 169] 3: 98
- Screw-cutting dies, Forbes's, limited to specific devices making up element of combination.  
[66 Fed. 318; 31 U. S. App. 123] 13: 494
- Secondary batteries, Brush's, limited to electrodes by which active material made by applying Plante method of electrical disintegration.  
[52 Fed. 130; 1 U. S. App. 320] 2: 682
- Separable pulleys, Dodge & Phillion's, limited by prior art.  
[92 Fed. 995; 62 U. S. App. 293] 35: 140
- Sewing machines, Willcox & Borton's, broadly construed as an ingenious and meritorious invention.  
[93 Fed. 206; 60 U. S. App. 451] 35: 269
- Shingle machine, combination, Perkins's, statements in specification not included in claim cannot be relied on to sustain claim.  
[80 Fed. 528; 53 U. S. App. 66] 25: 613
- Shoe clasps for Arctics, Hammond & King's, limited, in view of prior state of art, to specific combination described.  
[72 Fed. 171; 33 U. S. App. 417] 18: 502

## PATENTS—continued.

- Shoe clasps for Arctics, combination, Hammond & King's, reading certain limitations into claim. [58 Fed. 411; 14 U. S. App. 664] 7: 276
- Side-bearing girder rails, rolling method, Moxham's, limited to process in which all rolls described in specification employed in specific form shown. [56 Fed. 43; 17 U. S. App. 57] 5: 412
- Sinks, Kilbourne's process of construction, not covered, because not claimed or sufficiently described. [50 Fed. 697; 6 U. S. App. 65] 1: 617
- Sockets for electric lamps, Bergman's, limited to improvements in details, narrow construction. [83 Fed. 473; 51 U. S. App. 634] 27: 562
- Spring calipers and dividers, Fay's, combination, fulcrum and socket joint shown in drawings and specifications included. [100 Fed. 93] 40: 289
- Stapling machine for binding and fling papers, combination, Heysinger's, limited to specific structures claimed. [61 Fed. 405; 20 U. S. App. 608] 9: 555
- Split pulleys, Sanborn's, limited to solid wooden pulley divided into two sections. [74 Fed. 241; 24 U. S. App. 270] 20: 415
- Spring mattresses, Gail's, limited, by prior state of art, to specific form described. [93 Fed. 970] 36: 36
- Spring mattresses, Ryan's, limited, by prior state of art, to specific constructions shown. Id.
- Stem-winding watches, combination, Church's, limited by general terms in specifications. [52 Fed. 215; 9 U. S. App. 55] 3: 42
- Stem winding watches, reissue, Church's, covers merely stem-winding and hands setting train. [81 Fed. 957; 53 U. S. App. 404] 27: 21
- Store-service apparatus, combination, "way" described in claim limited to way consisting of two or more wires. [59 Fed. 776; 19 U. S. App. 360] 8: 265
- Stitch breaker for looped-fabric sewing machine, Traver's, restricted to combinations essentially of structural character. [70 Fed. 810; 35 U. S. App. 774] 17: 424
- Street-car truck, Brill's, limited to combination of parts. [90 Fed. 666; 62 U. S. App. 276] 33: 213
- Telephone switches, Roosevelt's, limited to mechanism described. [92 Fed. 181] 34: 275
- Tilting and rocking chair, Connolly's not cover platform rocking chairs with spiral springs. [77 Fed. 420; 47 U. S. App. 125] 23: 211
- Toy locomotives, Colby's, limited, by language of description and claim, to toys. [64 Fed. 594; 24 U. S. App. 460] 12: 319
- Tramway for curves and cable grips, reissue, Hallidie's, limited to combination described. [62 Fed. 288; 15 U. S. App. 541] 10: 376
- Traveling bags and satchels, Flecke's, limited to catch having three equidistant cam projections. [73 Fed. 833; 39 U. S. App. 193] 20: 31
- Trolley track, Coburn's, covers only specific device described. [97 Fed. 333] 38: 201
- Trunk fasteners, Taylor's, construed to contain specified combination. [63 Fed. 1001; 26 U. S. App. 358] 11: 546
- Tub-trussing machine, Corcoran's, restricted to particular construction described. [80 Fed. 293; 53 U. S. App. 104] 25: 426
- Tubular article casting molds, Adams's, not cover device shown by figure 3 of drawings. [76 Fed. 800; 39 U. S. App. 431] 22: 581
- Tubular lanterns, Betts's, confined to precise details shown. [69 Fed. 841; 14 U. S. App. 709] 13: 687
- Tubular lanterns, Higgins's, meaning of term "connected directly." Id.
- Twine binder, Gorham's, liberally construed as primary invention of high merit. [69 Fed. 371; 37 U. S. App. 299] 16: 259
- Umbrella and umbrella case, Rose's separate patents for, not to be read together. [77 Fed. 469; 39 U. S. App. 369] 23: 246
- Valve indicator, Kennedy's, limited to specific structure shown and described. [80 Fed. 527; 50 U. S. App. 122] 25: 612

## PATENTS—continued.

- Waffle irons, Selden & Griswold's, claims not restricted. to peculiar constructions described. [62 Fed. 389; 27 U. S. App. 122] 10: 435
- Waste valves and overflows for baths and basins, Carr's, limited to specific mechanism described. [53 Fed. 819; 3 U. S. App. 386] 4: 28
- Water-heating device for stoves, combination, Stirrat's, strictly limited to construction described. [61 Fed. 980; 27 U. S. App. 13] 10: 216
- Water-purifying process, Hyatt's, alum included in claim for use of coagulants. [66 Fed. 152; 26 U. S. App. 547] 13: 380
- Watering troughs, combination, Campbell's, limited to exact form described. [69 Fed. 1002; 32 U. S. App. 589] 16: 581
- Wax-thread sewing machines, combination, Campbell's, construed as giving arm action of lifting on axis to catch and retain thread. [86 Fed. 141; 50 U. S. App. 363] 29: 616
- Window-sash bars, Henderson's, limited, in view of prior state of art and amendments in patent office to particular forms of construction described. [67 Fed. 930; 34 U. S. App. 19] 15: 84
- Wire-cloth weaving, method of, Wright's, not so broadly construed as to give monopoly. [67 Fed. 790; 33 U. S. App. 188] 14: 646
- Wire-weaving shuttle, combination, Wright's, narrowly construed in view of prior state of art. Id.
- Wire glass, process for making, Shuman's, not pioneer invention. [97 Fed. 950] 38: 573
- Wood fibre paper, process of softening, McLaughlin's, limited, by prior state of art and language of specifications, to crumpling and pounding of paper when moistened. [72 Fed. 516; 37 U. S. App. 756] 18: 670
- Wood-fibre paper, process of softening, McLaughlin's, not for mere mechanical or aggregation of functions. [72 Fed. 508; 37 U. S. App. 742] 18: 662
- Wood-pulp digester, reissue, Russell's, claims construed in connection with references therein to specifications. [80 Fed. 395; 60 U. S. App. 52] 25: 500
- Workmen's time recorder, Bundy's, not broadly construed as primary invention. [64 Fed. 851; 26 U. S. App. 421] 12: 442
- Woven cane work, machine for inserting strips in, Morris's, not entitled to broad construction usually afforded pioneer invention. [98 Fed. 309] 39: 91

## XIII. INFRINGEMENT.

**In general.**

- General test. [83 Fed. 700; 42 U. S. App. 617] 28: 18
- Adopting patentee's ideas in construction and arrangement. [49 Fed. 859; 7 U. S. App. 103] 1: 452
- By machine operating on same principle. [64 Fed. 799; 28 U. S. App. 146] 12: 422
- Of improvement on device performing same function before as after the improvement. [97 Fed. 217] 38: 123
- Use for same purpose of different device, equivalency of which expressly denied by patentee. [97 Fed. 87] 38: 56
- Liberality in applying doctrine of equivalents to cover devices to avoid claim of. [97 Fed. 795] 38: 423
- Not avoided by change in form of elements. [64 Fed. 384; 22 U. S. App. 601] 12: 174  
[65 Fed. 427; 28 U. S. App. 275] 12: 671
- Of improved machine, by use of different form. [94 Fed. 155] 36: 125
- What constitutes mere change in form. [67 Fed. 542; 29 U. S. App. 572] 14: 617
- Of patent for slight improvement on device. [76 Fed. 965; 40 U. S. App. 200] 22: 658
- Differences in constructional details. [60 Fed. 283; 21 U. S. App. 98] 8: 622
- Patent limited to mechanical detail, different results and method. [59 Fed. 1003; 21 U. S. App. 3] 8: 442

**PATENTS—continued.**

- Not avoided by deliberately diminishing utility without materially changing form or manner of operation. [92 Fed. 630] 34: 579
- Impairing function of one element of patented invention without destroying substantial identity. [97 Fed. 795] 38: 423
- Not avoided because infringing device more cumbersome and involves more delay. [91 Fed. 792; 63 U. S. App. 56] 34: 86
- Not avoided by duplicating mechanism. [72 Fed. 67; 37 U. S. App. 555, 689] 19: 13
- Duplication of parts to produce same result, tributary invention. [82 Fed. 428; 54 U. S. App. 267] 27: 200
- Reading feature of construction in one claim into another, to make out. [92 Fed. 167] 34: 280
- Reconstruction, as distinguished from repairing. [60 Fed. 276; 21 U. S. App. 74] 8: 615

**Combinations.**

- Of combination claimed, generally. [49 Fed. 859; 7 U. S. App. 103] 1: 452
- Joining two elements without change in results. [94 Fed. 524] 36: 375
- Same elements or equivalents, different forms. [75 Fed. 301; 39 U. S. App. 257] 22: 203
- Mode of determining whether one device employs means equivalent to those of another. [70 Fed. 816; 25 U. S. App. 475] 17: 430
- Difference in operation produced by simple mechanical change or use of mechanical equivalents. [52 Fed. 215; 9 U. S. App. 55] 3: 42
- Invention involving new and useful function in limited field of operation; doctrine of equivalent. [80 Fed. 287; 50 U. S. App. 85] 25: 420
- When court liberal in applying doctrine of equivalents. [92 Fed. 630] 34: 579
- Invoking doctrine of known equivalent against infringers. [92 Fed. 146; 63 U. S. App. 626] 34: 248
- Of improved machine by use of different combination of original machine. [94 Fed. 155] 36: 125
- Omitting details described in specification but not in claim for combination. [91 Fed. 248; 50 U. S. App. 447] 33: 485
- Of combinations claimed composed of old elements, substituting equivalent for omitted element. [53 Fed. 385; 7 U. S. App. 444] 3: 570
- Substitution of well-known equivalent for one element, slightly varying the working of the combination. [58 Fed. 583; 5 U. S. App. 556] 7: 382
- Different combinations accomplishing general result formed independently from several inventors. [77 Fed. 432; 40 U. S. App. 482] 23: 223
- Combination of old elements, not infringed by combination of different elements to accomplish same purpose. [99 Fed. 90] 39: 426
- Substitution of a particular element known at date of patent as a means of performing similar work. [49 Fed. 859; 7 U. S. App. 103] 1: 452
- Effect of fact that substitute performed some additional functions. Id.
- Use of analogous means or equivalent combinations as original invention. Id.
- Of patent, claiming mechanical powers in combination. [78 Fed. 346; 42 U. S. App. 314] 24: 128
- Absence of single essential element. [77 Fed. 432; 40 U. S. App. 482] 23: 223
- Infringing machine must have substantially every element, or mechanical equivalents. [67 Fed. 236; 29 U. S. App. 248] 14: 383  
[67 Fed. 926; 31 U. S. App. 652] 15: 82
- Effect of absence of essential element from infringing device. [76 Fed. 965; 40 U. S. App. 200] 22: 658
- Nonuse of subordinate elements of combination described in one claim and omitted from another. [82 Fed. 227; 49 U. S. App. 508] 27: 191
- Necessity of appearance in infringing, of structural characteristics. [80 Fed. 121; 48 U. S. App. 120] 25: 323

**PATENTS—continued.****Processes.**

- Successive steps involved, different and several steps omitted.  
[90 Fed. 724; 62 U. S. App. 456] 33: 254
- Putting in element at time other than that stated to be preferable.  
[90 Fed. 829; 58 U. S. App. 778] 33: 387
- Using much smaller percentage of certain element than stated to be preferable.  
Id.
- When infringing compound fails to respond to tests of identity selected by patentee.  
[78 Fed. 910; 45 U. S. App. 473, 557] 24: 384
- Identifying test inserted by solicitor in absence of client.  
Id.

**Designs.**

- Test generally as to design patent. [58 Fed. 398; 17 U. S. App. 184] 7: 272
- Producing same effect on eye as patented design.  
[64 Fed. 118; 28 U. S. App. 99] 12: 70
- Design, with imitative figure smaller than those of patent.  
[84 Fed. 1019; 50 U. S. App. 351] 28: 653

**Sale, etc., constituting.**

- When consent of patentee implied from sale of article.  
[50 Fed. 775; 3 U. S. App. 140] 1: 659
- Contributory, selling one element of patented combination.  
[80 Fed. 712; 54 U. S. App. 1] 26: 107
- Contributory, manufacture and sale of pump lacking but one essential feature.  
[82 Fed. 432; 53 U. S. App. 478] 27: 204
- Furnishing user of patented invention a substitute element.  
[75 Fed. 1005; 45 U. S. App. 95] 22: 1
- Contributory furnishing staples to user of machine bound to use only patentee's staples.  
[77 Fed. 288; 47 U. S. App. 146; 35 L. R. A. 728] 25: 267
- Making patented article for licensee. [55 Fed. 487; 3 U. S. App. 541] 5: 204
- Right of purchaser of patented machine to repair.  
[77 Fed. 739; 40 U. S. App. 728] 23: 433
- Purchaser rebuilding so as to make practically new machine.  
[100 Fed. 462] 40: 494
- Making experimental test of processes covered by patent.  
[84 Fed. 643; 55 U. S. App. 507] 28: 501
- Violating prohibition in contract of sale against importation and sale in United States.  
[57 Fed. 524; 14 U. S. App. 569] 6: 466
- Notice of intention to import, what constitutes.  
Id.
- Purchasing article in foreign country and selling in United States.  
[84 Fed. 192; 55 U. S. App. 217] 28: 139
- Purchase from other than owner of patent or his vendees.  
Id.
- Purchase from owner of patent, on condition not to import.  
Id.

**Particular patents.**

- Advertising rack for street cars, Randall's.  
[88 Fed. 795; 50 U. S. App. 425] 32: 122
- Air brakes, Westinghouse's.  
[63 Fed. 962; 26 U. S. App. 248] 11: 528  
[69 Fed. 715; 35 U. S. App. 373] 16: 371  
[88 Fed. 258; 59 U. S. App. 592] 31: 525  
[96 Fed. 991] 37: 649
- Air brakes, Westinghouse's, by Boyden's.  
[70 Fed. 816; 25 U. S. App. 475] 17: 430
- "Anti-rattler" for thill couplings, Blair's.  
[80 Fed. 151; 53 U. S. App. 181] 25: 322
- Asbestos rope steam packing, John's, sizing of starch not equivalent to solution of India rubber.  
[77 Fed. 985; 45 U. S. App. 296] 23: 601
- Asphalt pavement repairing process. Perkins's.  
[95 Fed. 137] 37: 28

## PATENTS—continued.

Automatic grain twine binder, Gorham's, by Appleby's.	[69 Fed. 371; 37 U. S. App. 299]	16: 259
Bag or satchel frame, Roemer's.	[81 Fed. 380; 39 U. S. App. 719]	26: 440
Bag or satchel handles, Roemer's.	[78 Fed. 117; 39 U. S. App. 496]	24: 39
Bail ear for pail, McDonnell's.	[67 Fed. 143; 28 U. S. App. 360]	14: 245
Bicycle bell, Ericson's by Barker.	[98 Fed. 892]	39: 332
Bicycle tires, Brown & Stillman's, by Moomey's.	[70 Fed. 58; 28 U. S. App. 470]	16: 632
Boiler, sectional, Hazelton & Kennedy's.	[56 Fed. 845; 9 U. S. App. 580]	6: 161
Bookbindings, Ryan's.	[97 Fed. 964]	38: 587
Box covering and trimming machines, Munro's.	[91 Fed. 147; 62 U. S. App. 353]	33: 425
Box hinge, duplex, Atwood's.	[48 Fed. 910; 5 U. S. App. 1]	1: 144
Box machines, combination, reissue, Beach's.	[71 Fed. 420; 35 U. S. App. 667]	18: 165
Box machine, combination, reissue, Beach's, by mechanism well known as proper substitute.	[92 Fed. 146; 63 U. S. App. 626]	34: 248
Bottles and corks, De la Vergne's.	[66 Fed. 765; 24 U. S. App. 649]	14: 77
Breech piece for guns, Eutebrouk's.	[91 Fed. 160; 50 U. S. App. 476]	33: 426
Breaking carts, Putnam's by change in form of strap.	[67 Fed. 542; 29 U. S. App. 572]	14: 517
Brick machines, Chambers's.	[92 Fed. 630]	34: 579
Brick kiln, combination, Kinzel's.	[67 Fed. 926; 31 U. S. App. 652]	15: 82
Brooms, Bradshaw & Richardson's, and Bradshaw's.	[80 Fed. 732; 48 U. S. App. 304]	26: 125
Buttonholing machines, Osterhout's, by Tebbetts & Doggett's.	[79 Fed. 432; 45 U. S. App. 665]	24: 663
Buttonholing machines, Reece's.	[61 Fed. 958; 21 U. S. App. 244]	10: 194
Buttons, Raymond's.	[84 Fed. 104; 51 U. S. App. 653]	28: 133
Cable, tension apparatus for, Root's.	[53 Fed. 382; 7 U. S. App. 434]	3: 566
Can-crimping machine, Gordon's, by Jensen's.	[64 Fed. 599; 29 U. S. App. 125]	12: 324
Can-heading machine, combination, Jordan's by Jensen's.	[49 Fed. 859; 7 U. S. App. 103]	1: 452
Can-heading machine, combination, Norton's, by Wheaton's.	[70 Fed. 833; 44 U. S. App. 118]	17: 447
Can-heading machine, combination, Norton's and Norton & Hodgson's, by Jensen's of mechanical equivalents.	[49 Fed. 859; 7 U. S. App. 103]	1: 452
Can-heading machine, combination, Norton & Hodgson's and Jordan's, by Jensen's omitting space made essential element of combination.	[90 Fed. 415; 61 U. S. App. 291]	33: 141
Can-making machines, Hipperling's by Adriance's patent.	[92 Fed. 369; 63 U. S. App. 307]	34: 413
Can-making machine, Leavitt's, by Jensen's.	[67 Fed. 236; 29 U. S. App. 248]	14: 383
Car-axle box, Bemis's.	[80 Fed. 287; 50 U. S. App. 85]	25: 420
Car-axle box lids, Morris's by Davis's device.	[81 Fed. 407; 39 U. S. App. 664]	26: 460
Car couplers of Janney type, Browning's by Trojan's.	[74 Fed. 794; 38 U. S. App. 702]	21: 97
Car couplers of Janney type, reissue, Lorraine & Aubin's by Tower's.	[87 Fed. 885; 57 U. S. App. 310]	31: 265
Car coupler, Lorraine & Aubin, reissue, and Wolcott & O'Hara patent, by selling knuckle for purposes of repair, to purchaser from patentee.	[77 Fed. 739; 40 U. S. App. 728]	23: 433

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Car roofs, combination, Murphy's, by Jennings's, omission of chief element.	[76 Fed. 965; 40 U. S. App. 200]	22: 658
Carpet body, design, Neil's.	[84 Fed. 1019; 50 U. S. App. 351]	28: 653
Carpet sweepers, Plumb's.	[72 Fed. 67; 37 U. S. App. 555, 689]	19: 13
Carriage tops, device for building, Oakes's by Quimby's.	[66 Fed. 1007; 33 U. S. App. 20]	14: 223
Cash carriers, Martin's.	[67 Fed. 786; 33 U. S. App. 157]	14: 642
Cash register, Campbell's.	[53 Fed. 367; 3 U. S. App. 340]	3: 559
	[70 Fed. 709; 35 U. S. App. 659]	17: 355
Castings, Wittenstrom's.	[90 Fed. 829; 58 U. S. App. 778]	33: 387
"Chymosim," process for, Blumenthal's.	[53 Fed. 105; 11 U. S. App. 619]	3: 462
Cigar-maker's implements, Streat's.	[83 Fed. 700; 42 U. S. App. 617]	28: 18
Cigarette machine, Hook's, by Hardie's reissue.	[69 Fed. 335; 35 U. S. App. 436]	16: 250
Clamp apparatus for street railways, Eppelsheimer's combination.	[53 Fed. 385; 7 U. S. App. 444]	3: 570
Clay disintegrator, Potts's.	[97 Fed. 78]	38: 47
Cloth-napping machine, combination, Grosselin's, by mechanical equivalents.	[91 Fed. 792; 63 U. S. App. 56]	34: 86
Cloth-napping machine, combination, Grosselin's, by using pulleys differing in size, in place of cone pulleys.	[82 Fed. 449; 50 U. S. App. 180]	27: 316
Coal screens, Phillips's.	[86 Fed. 137; 56 U. S. App. 108]	29: 612
Coal screens and chute, reissue, Roberts's.	[69 Fed. 246; 29 U. S. App. 729]	16: 219
	[79 Fed. 355; 48 U. S. App. 327]	24: 640
Cop-winding machine, Wardwell's.	[92 Fed. 391; 63 U. S. App. 198]	34: 415
Corks, De la Vergne's.	[66 Fed. 705; 24 U. S. App. 649]	14: 77
Corn shellers, combination, Gillet's.	[91 Fed. 254; 63 U. S. App. 580]	33: 491
Cotton, apparatus for handling, Munger's mechanical equivalents.	[40 Fed. 61; 2 U. S. App. 55]	1: 158
Creaming milk, process of, Houston & Thomson's.	[84 Fed. 881; 55 U. S. App. 602]	28: 555
Crocheting and overseaming machine, Merrow's.	[61 Fed. 945; 17 U. S. App. 555]	10: 181
Crushing mills, Huntington's.	[95 Fed. 471]	37: 151
Cuff fasteners, Frank's.	[67 Fed. 596; 28 U. S. App. 414]	14: 560
Dies for forging metal articles, Simonds's.	[93 Fed. 958]	36: 24
Door check and closers, Blount's.	[75 Fed. 674; 38 U. S. App. 608]	21: 495
Double-acting force pumps, Van Duzen's.	[82 Fed. 432; 53 U. S. App. 478]	27: 204
Driving chain, Dodge's by Mitchell's device.	[81 Fed. 390; 39 U. S. App. 735]	26: 443
Dynamo electric machines, Scribner and Warner's, by Loveridge's.	[84 Fed. 654; 55 U. S. App. 630]	28: 512
Easel album, Jaeger's.	[61 Fed. 105; 17 U. S. App. 490]	9: 385
Electrical car heaters, McElroy's.	[85 Fed. 662; 50 U. S. App. 314]	29: 386
Electric-arc lamps, Scribner's, by Sperry's.	[58 Fed. 186; 18 U. S. App. 177]	7: 164
Electric circuit connector, Means's.	[96 Fed. 761]	37: 580
Electric-lamp sockets, Bergman's.	[83 Fed. 473; 51 U. S. App. 634]	27: 562
Electric lamp, double carbon, Brush's, by Scribner's.	[76 Fed. 761; 46 U. S. App. 355]	22: 543
Electric-lighting gas burner, Pinkham's.	[51 Fed. 754; 7 U. S. App. 239]	2: 495

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Electric motor, Adams's.	[77 Fed. 432; 40 U. S. App. 482]	23: 223
Electric motor controlling switch, Condict's.	[91 Fed. 142; 62 U. S. App. 373]	33: 420
Electric railway, Green's.	[92 Fed. 614]	34: 570
Electric-railway motors, Sprague's, by Short's.	[88 Fed. 82; 58 U. S. App. 700]	31: 391
Electric-railway signaling apparatus, Gassett's.	[96 Fed. 761]	37: 580
Electric-railway switches, Van Depoele's.	[71 Fed. 396; 38 U. S. App. 55]	18: 143
Electric snap switch, Hart's, by use of mechanical equivalents.	[92 Fed. 657]	34: 606
Electric track circuit connector, Gassett & Fisher's.	[96 Fed. 761]	37: 580
Electric wiring, combination, Johnson & Greenfield's.	[89 Fed. 1018; 45 U. S. App. 754]	32: 487
Elevated gravity and cable railways as Thompson's by Lilley's electric pleasure railway.	[99 Fed. 90]	39: 426
Elevators, Hinkle's.	[94 Fed. 155]	36: 125
Elevators, device for controlling, Reynolds's.	[71 Fed. 876; 39 U. S. App. 95]	18: 375
Eyeglass case, Warren's.	[93 Fed. 963]	36: 29
Fabric sewing or quilting machine, Palmer's.	[92 Fed. 925]	35: 86
Fence-wire coupling, Morrison's, by Gerard and Lawrence's.	[97 Fed. 502]	38: 300
Fibre chamois, McLaughlin's.	[72 Fed. 516; 37 U. S. App. 756]	18: 670
Folding beds, Hale's.	[69 Fed. 958; 28 U. S. App. 525]	16: 569
Folding gate, Maddox & Humphries's.	[61 Fed. 684; 26 U. S. App. 21]	10: 12
Folding machines, Crowell's, by machine accomplishing same end in substantially same way.	[70 Fed. 781; 28 U. S. App. 636]	17: 410
Friction match device, Pusey's.	[77 Fed. 208; 39 U. S. App. 386]	23: 122
Fruit parers, Scott's.	[55 Fed. 971; 3 U. S. App. 643]	5: 366
Gas-generating fixtures design patent.	[97 Fed. 87]	38: 56
Gas stoves, Carrington's.	[71 Fed. 298; 35 U. S. App. 805]	18: 45
Glass-ware manufacturing process, Arbogast's.	[90 Fed. 724; 62 U. S. App. 456]	33: 254
Glove fasteners, Kraetzer's.	[58 Fed. 818; 5 U. S. App. 588]	7: 498
Glove fasteners, Richardson's, by Adams's.	[96 Fed. 489]	37: 523
Graphophone, Bell & Tainter's.	[92 Fed. 364]	34: 412
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Hammocks, Palmer's.	[93 Fed. 464]	35: 389
Hay-elevator tracks, Ney's, by J. & V. Ney's.	[69 Fed. 405; 37 U. S. App. 371]	16: 293
Hay press, Knight, Kelly, & Alderson's.	[81 Fed. 726; 40 U. S. App. 414]	26: 578
Hay press, combination relating to, Sooy's.		Id.
Hay press, device to permit frame at outer end of baling chamber to expand or contract, Sooy's.		Id.
Hay press, draft pole or sweep of, Sooy's.		Id.
Hay press, power mechanism for, Sooy's.		Id.
Hides and skins, machine for unhairing and scouring, McDonald's.	[63 Fed. 611; 21 U. S. App. 428]	11: 355
Hide dressing machine, Rood & Vaughan's.	[99 Fed. 990]	40: 209
Hydraulic dredging machines, Bowers's, by Von Schmidt's.	[80 Fed. 121; 48 U. S. App. 120]	25: 323



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Hydraulic elevator apparatus, combination, Reynolds's.	[76 Fed. 767; 46 U. S. App. 411]	22: 549
Insole for slipper, Sessler's, by Borchardt's.	[80 Fed. 291; 51 U. S. App. 60]	25: 424
Iron-building construction, combination, Buffington's.	[65 Fed. 804; 27 U. S. App. 693]	13: 143
Jacking apparatus, Barrett's.	[81 Fed. 865; 55 U. S. App. 27]	26: 654
Jump seats, combination, Clarkson's.	[63 Fed. 607; 21 U. S. App. 443]	11: 351
Kiln for drying lumber, Emerson's.	[99 Fed. 737]	40: 87
Lacing hooks, machine for feeding and setting, Eppler's, by Smith's.	[70 Fed. 66; 33 U. S. App. 306]	16: 639
Lappet-loom, Macoll's.	[95 Fed. 987]	37: 351
Lasting machines, Copeland, Woodward, & Brock's.	[61 Fed. 102; 21 U. S. App. 132]	9: 382
Lasting and tacking machine, Woodward's.	[60 Fed. 283; 21 U. S. App. 98]	8: 622
Lawn sprinklers, Bonnette's.	[82 Fed. 428; 54 U. S. App. 267]	27: 200
Leather cutting machine, Parson's, omission of unessential element.	[100 Fed. 455]	40: 486
Lifting jack, substitution of equivalents.	[59 Fed. 772; 17 U. S. App. 435]	8: 261
Linotype machines, combination, Mergenthaler's, by Rogers's.	[64 Fed. 799; 28 U. S. App. 146]	12: 422
Lumber drying kiln, Emerson's.	[99 Fed. 737]	40: 87
Magneto-electric machines, Smith's.	[67 Fed. 137; 26 U. S. App. 697]	14: 241
Mail-stamping apparatus, Hey's.	[61 Fed. 284; 20 U. S. App. 636]	9: 507
Malt kilns, Toepfer's.	[83 Fed. 712; 34 U. S. App. 772; 53 U. S. App. 629]	28: 30
Mantels, design for, Anderson's, by Germain's.	[58 Fed. 398; 17 U. S. App. 184]	7: 272
Mattress-stuffing machine, Stephenson's.	[82 Fed. 639; 46 U. S. App. 193]	27: 243
Map case, Nutting's, by device not strikingly different in form.	[77 Fed. 835; 46 U. S. App. 608]	23: 488
Metal-cutting saws, Fowler's.	[96 Fed. 238]	37: 456
Metal-mixing process, Jones's.	[96 Fed. 850]	37: 593
Metallic ceilings, Northrop's.	[51 Fed. 685; 3 U. S. App. 186]	2: 455
Method of forming hollow spheroidal bodies from sheet metal tubes, Burkhardt's.	[79 Fed. 801; 51 U. S. App. 22]	25: 196
Mince-pie compounds, Allen's.	[63 Fed. 475; 26 U. S. App. 155]	11: 298
Milk-testing apparatus, rotary, Sharpless, by Stoddard's.	[81 Fed. 179; 51 U. S. App. 332]	26: 327
Milk-separating machine, centrifugal, Sharpless's reissue, by "rotary" milk tester.		Id.
Mining machine, Lechner's.	[83 Fed. 191; 54 U. S. App. 348]	27: 512
Motor suspension for railway cars, Rice's.	[91 Fed. 767; 63 U. S. App. 42]	34: 75
Mowing machine, Smith's, by use of equivalents.	[92 Fed. 167]	34: 280
Mufflers for escape of exhaust steam, Swift's, by Eames's.	[75 Fed. 589; 35 U. S. App. 109]	21: 447
Ore mill, reissue, Rutter's.	[55 Fed. 409; 9 U. S. App. 378]	5: 154
Paper bags, machine for making, Lorenz & Honiss's, by Stilwell's.	[56 Fed. 224; 5 U. S. App. 327]	5: 490
Paper boxes, Ritter's.	[51 Fed. 229; 1 U. S. App. 283]	2: 165
	[86 Fed. 917; 57 U. S. App. 66]	30: 487

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Paper or strawboard box machine, reissue, Beach's.	[78 Fed. 923; 45 U. S. App. 553]	24: 408
Paper pulp, Keyes's.	[87 Fed. 215; 57 U. S. App. 270]	30: 615
Penholders, Tower's.	[94 Fed. 361]	36: 294
Plastic substances, machine for cutting up, Baker's.	[53 Fed. 791; 3 U. S. App. 414]	3: 672
	[80 Fed. 537; 51 U. S. App. 260]	25: 622
Pliers, Bernard's.	[91 Fed. 775; 63 U. S. App. 128]	34: 83
Pneumatic drilling tools, Bates's, by Boyer's patent.	[77 Fed. 988; 45 U. S. App. 350]	23: 603
Pneumatic drilling tool, Bates's, by Drawbaugh's.	[71 Fed. 523; 38 U. S. App. 129]	18: 235
Poultry crate for live poultry, Thomasson's.	[78 Fed. 491; 42 U. S. App. 295]	24: 180
Printing machine, Kidder's and Stonemetz's.	[69 Fed. 250; 37 U. S. App. 250]	16: 220
Printing press and folding machine, Stonemetz's, by Brown's.	[82 Fed. 662; 53 U. S. App. 437]	7: 374
Process for converting sheet-metal tubing into spheroidal bodies, Burkhardt's.	[79 Fed. 801; 51 U. S. App. 22]	25: 196
Pumps, gas-liquefying, Boyle's.	[80 Fed. 918; 53 U. S. App. 242]	26: 246
Pump-regulating valves, Blessing's.	[79 Fed. 966; 51 U. S. App. 164]	25: 258
Radiators, design for, Prentice's.	[79 Fed. 993; 26 U. S. App. 781]	25: 676
Railroad spike, Goldie's.	[84 Fed. 972; 56 U. S. App. 68]	28: 589
Railway switches, Brahn's, by device merely showing variation in form of jaws.	[90 Fed. 493; 61 U. S. App. 457]	33: 619
Road carts, Miller's.	[73 Fed. 682; 38 U. S. App. 483]	19: 644
Road graders, Welch's, by Houser's.	[86 Fed. 646; 57 U. S. App. 428]	30: 320
Roller coasters, Thompson's, by similar structure.	[93 Fed. 824]	35: 620
Roller coaster, Thompson's, by use of equivalents.		Id.
Rowlocks, Davis's.	[71 Fed. 961; 33 U. S. App. 340, 370, 371]	18: 398
Rubber mats, design for, Woffenden's.	[53 Fed. 810; 11 U. S. App. 637]	4: 21
Rubber waste, process of treating, Mitchell's.	[71 Fed. 179; 39 U. S. App. 11]	18: 31
Safes, burglar-proof, combination, Gerard's.	[54 Fed. 889; 13 U. S. App. 73]	4: 644
	[61 Fed. 209; 23 U. S. App. 341]	9: 451
Screw-cutting dies, Forbes's, by Wells's.	[66 Fed. 318; 31 U. S. App. 123]	13: 494
	[77 Fed. 206; 39 U. S. App. 353]	23: 119
Screw thread-protecting device, Kurtz's.	[95 Fed. 136]	37: 27
Separable pulleys, Dodge & Phillion's.	[85 Fed. 971; 53 U. S. App. 636]	29: 508
	[86 Fed. 904; 56 U. S. App. 225]	30: 455
	[92 Fed. 905; 62 U. S. App. 293]	35: 140
Sewing machines, Willcox & Barton's.	[93 Fed. 206; 60 U. S. App. 451]	35: 269
	[93 Fed. 215]	35: 278
Sheet-metal, machinery for spinning, Chaumont's.	[59 Fed. 143; 20 U. S. App. 179]	8: 53
Shoe clasps, Hammond & Kings.	[72 Fed. 171; 33 U. S. App. 417]	18: 502
Sole-cutting machine, Loewer and Blair's.	[79 Fed. 325; 39 U. S. App. 554]	24: 612
Soles of boots and shoes, machine for beating out, Cutcheon's.	[72 Fed. 920; 33 U. S. App. 421]	19: 237
Spike-cutting machine, Goldie's.	[84 Fed. 972; 56 U. S. App. 68]	28: 589

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Spinning-machine-spindle supports, Atwood's.	[75 Fed. 301; 39 U. S. App. 257]	22: 203
	[83 Fed. 693; 51 U. S. App. 611]	28: 15
Spring calipers and dividers, Fay's.	[100 Fed. 93]	40: 289
Spring mattresses, Gail's.	[93 Fed. 970]	36: 36
Spring mattresses, Ryan's.		Id.
Starch, process of making from corn, Behr's.	[84 Fed. 977; 56 U. S. App. 158]	28: 594
Steam-engine lubricators, sight-feed, Craig's.	[81 Fed. 870; 54 U. S. App. 168]	26: 659
Steam generators, Morrin's.	[99 Fed. 977]	40: 204
Steam generators, Morrin & Scott's.		Id.
Steam-pipe union, Paynter's.	[64 Fed. 398; 28 U. S. App. 115]	12: 188
Steering head for road vehicles, Long's.	[75 Fed. 835; 33 U. S. App. 554]	21: 533
Stem-winding watches, combination, reissue, Church's by Sheridan's, simple mechanical change and use of equivalents.	[52 Fed. 215; 9 U. S. App. 55]	3: 42
	[64 Fed. 384; 22 U. S. App. 601]	12: 174
Stencil sheets, Broderick's.	[88 Fed. 264; 59 U. S. App. 616]	31: 530
Stitch breaker for looped-fabric sewing machine, Travers's.	[70 Fed. 810; 35 U. S. App. 774]	17: 424
Stock car with fire-proof feeding racks along entire length of car, including doorway, Howard & Baines's.	[79 Fed. 997; 26 U. S. App. 783]	25: 300
Stone-breaking machines, Brown's.	[78 Fed. 350; 41 U. S. App. 201]	24: 132
Stoves, design, Boal's.	[84 Fed. 182; 54 U. S. App. 389]	28: 317
'Target-throwing device, Stock's original and reissue by Hebbard's.	[58 Fed. 227; 16 U. S. App. 78]	7: 197
Tawing leather, processes of Schultz.	[70 Fed. 1003; 28 U. S. App. 620]	17: 552
	[81 Fed. 178; 39 U. S. App. 652]	26: 326
	[84 Fed. 643; 55 U. S. App. 507]	28: 501
	[84 Fed. 644; 55 U. S. App. 503]	28: 503
Telephone circuits, Carty's.	[95 Fed. 152]	37: 38
Temperature regulators, Johnson's.	[85 Fed. 863; 53 U. S. App. 681]	29: 459
Textile material crimping machine, Crosby & Kellogg's.	[76 Fed. 227; 45 U. S. App. 105]	22: 138
Thread protector for iron pipe, Blakey's.	[98 Fed. 890]	39: 330
Tobacco-flavoring machine, King's.	[78 Fed. 346; 42 U. S. App. 314]	24: 128
Tool holder for lathes, improved, Muller's.	[77 Fed. 621; 47 U. S. App. 189]	23: 357
Toy locomotive, Colby's.	[64 Fed. 594; 24 U. S. App. 460]	12: 319
Trunk fasteners, Taylor's.	[63 Fed. 1001; 26 U. S. App. 358]	11: 546
Tub-trussing machine, Corcoran's, by Ulrich's.	[80 Fed. 293; 53 U. S. App. 104]	25: 426
Tubular lanterns, Higgins's.	[69 Fed. 841; 14 U. S. App. 709]	13: 687
Turn-over device for continuous rolling mills.	[59 Fed. 129; 17 U. S. App. 296]	8: 41
Twine binders, Gorham's by Appleby's.	[69 Fed. 371; 37 U. S. App. 299]	16: 259
Type-casting molds, Rettig's.	[95 Fed. 145]	37: 32
Umbrella sticks and umbrella cases, Rose's.	[77 Fed. 469; 39 U. S. App. 369]	23: 246
Velocipede saddle, Overman's.	[61 Fed. 986; 21 U. S. App. 204]	10: 222
Vending machine, Sielaff's.	[77 Fed. 978; 45 U. S. App. 428]	23: 599

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Ventilator and combined ventilator and refrigerator car, Earl's, by Kerby's.	[92 Fed. 155; 48 U. S. App. 691]	34: 267
Ventilator and combined ventilator and refrigerator car, Graham's reissue, Kerby's.	[82 Fed. 737; 48 U. S. App. 691]	27: 377
Wash valves and overflows for basins and baths, Foley's, by Carr's.	[55 Fed. 876; 14 U. S. App. 392]	5: 288
Watchman's time detector Bauer's, by Watson's.	[94 Fed. 524]	36: 375
Water-clarifying method, Hyatt's.	[80 Fed. 924]	51 U. S. App. 355] 26: 252
Water-closets, Smith's.	[89 Fed. 297; 60 U. S. App. 338]	32: 205
Water meters, Nash's.	[65 Fed. 427; 28 U. S. App. 275]	12: 671
Water-purifying method, Hyatt's.	[66 Fed. 152; 26 U. S. App. 547]	13: 380
Welt-guide, Bates's.	[84 Fed. 1014; 50 U. S. App. 337]	28: 638
Window-sash bars, Henderson's, by Schuhmann's.	[67 Fed. 930; 34 U. S. App. 19]	15: 84
Wire connections, Morrison's by Gerard and Lawrence.	[97 Fed. 502]	38: 300
Wire rod mills, Roberts's.	[71 Fed. 706; 39 U. S. App. 44]	18: 302
Wire-weaving shuttle, combination, Wright's.	[67 Fed. 790; 33 U. S. App. 188]	14: 646
Wood-pulp digesters, Russell's reissue.	[80 Fed. 395; 50 U. S. App. 52]	25: 500
Workman's time recorder, Bundy's, by English's.	[64 Fed. 851; 26 U. S. App. 421]	12: 442
Workman's time recorder, Bundy's, by Watson's, by using mechanical equivalents.	[94 Fed. 524]	36: 375
Woven cane work, machine for inserting strips in, Morris's.	[98 Fed. 309]	39: 91

## XIV. REMEDIES FOR INFRINGEMENT.

## In general.

Liability for, as defense to action for purchase price.	[50 Fed. 778; 3 U. S. App. 111]	1: 663
Discovery of alleged sale of infringing articles; what books required to be produced.	[82 Fed. 813; 53 U. S. App. 556]	27: 165
Right of purchaser at judicial sale to vend as against owner of patent.	[98 Fed. 621]	39: 191
Equities of purchasers of infringing articles during delay in bringing suit.	[53 Fed. 592; 11 U. S. App. 712]	3: 605
Rights of purchaser of plant, pending suit to test patent, to be supplied with patented article required.	[58 Fed. 572; 20 U. S. App. 111]	7: 375
Effect of defendant's disclaimer of intention to sell to exclude equitable jurisdiction.	[51 Fed. 754; 7 U. S. App. 239]	2: 495
Necessity for filing disclaimer; effect, on costs, of failure to do so.	[77 Fed. 490; 33 U. S. App. 714]	23: 250
Estoppel, because of prior license, to dispute validity of patent.	[75 Fed. 17; 43 U. S. App. 391]	21: 198
Estoppel against alleged infringer by holding license.	[95 Fed. 664]	37: 221
Estoppel to deny validity of patent alleged to be infringed.	[89 Fed. 308; 60 U. S. App. 572]	32: 216
Suit for, brought in any district.	[88 Fed. 258; 59 U. S. App. 592]	31: 525
Suit by junior, against senior, patentee, without obtaining cancellation of senior patent.	[59 Fed. 295; 18 U. S. App. 472]	8: 129
Intervention by true owner of alleged infringing cars.	[54 Fed. 521; 7 U. S. App. 636]	4: 491
Misjoinder of parties, dismissal of bill as to one defendant.	[85 Fed. 662; 50 U. S. App. 314]	29: 386

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- Multifariousness, seeking recovery for infringement of several patents.  
[81 Fed. 726; 49 U. S. App. 414] 26: 578
- Description of patent in complaint for.  
[92 Fed. 155; 48 U. S. App. 691] 34: 267
- Pleading in infringement suits, see Note, 19: 595
- Court taking judicial notice of what disclosed by own records in prior case, to ascertain state of art.  
[95 Fed. 664] 37: 221
- Judicial notice taken of prior state of art.  
[100 Fed. 452] 40: 494  
[100 Fed. 459] 40: 491
- Judicial notice not taken of single patent relating to particular fact in limited art.  
[100 Fed. 452] 40: 484
- Weight of expert opinions on question of.  
[49 Fed. 859; 7 U. S. App. 103] 1: 452
- Weight of expert testimony as to mechanical equivalency.  
[94 Fed. 155] 36: 125
- Evidence as to defendant's belief in validity of patents under which machines made.  
[94 Fed. 502] 37: 372
- Permitting witness to compare design of plaintiff's patent with others, and point out differences.  
[97 Fed. 625] 38: 345
- Other design patents admissible in action for infringement, to show prior state of art.  
[97 Fed. 625] 38: 345
- Admissibility of patent of which notice not given, merely to show prior state of art for purpose of showing infringement.  
[94 Fed. 155] 36: 125
- Model before jury, testimony as to shape of part.  
[56 Fed. 587; 15 U. S. App. 143] 6: 45
- Reading to jury opinion of court in another case involving same patent.  
[55 Fed. 323; 5 U. S. App. 258] 5: 110
- Question of, mixed, of law and fact.  
[82 Fed. 737; 48 U. S. App. 691] 27: 377  
[92 Fed. 155; 48 U. S. App. 691] 34: 267
- Infringement question for jury, where question turns on construction of patent.  
[63 Fed. 611; 21 U. S. App. 428] 11: 355
- Decree for infringement several as well as joint.  
[93 Fed. 958] 36: 24
- Right of defendants granted rehearing for newly discovered evidence to contest any issue opened although judgments against them in other suits.  
[99 Fed. 280] 39: 508
- Defendant attacking, in bill of review, validity of complainant's patent on new ground.  
[98 Fed. 121] 38: 661
- Defendant first attacking in bill of review, complainant's patent on ground of prior public use nearly ten years after suit commenced. Id.

**Who liable.**

- Agent or manager.  
[92 Fed. 155; 48 U. S. App. 691] 34: 267
- Liability of agent for manager of infringer.  
[82 Fed. 737; 48 U. S. App. 691] 27: 377
- Personal liability of corporate director ordering manufacture and sale of infringing article.  
[94 Fed. 502] 37: 372

**Injunction—In general.**

- Necessity of showing public acquiescence when design patent not adjudicated on.  
[97 Fed. 987] 39: 32
- Authority of district judge to grant.  
[77 Fed. 206; 39 U. S. App. 353] 23: 119
- Relief through injunction.  
[68 Fed. 489; 37 U. S. App. 109] 15: 520
- Enjoining action at law for infringement.  
[67 Fed. 597; 29 U. S. App. 564] 14: 561
- On ground of contributory infringement.  
[75 Fed. 1005; 45 U. S. App. 95] 22: 1

**PATENTS—continued.**

- Injunction against use of machine in violation of condition of sale.  
[77 Fed. 288; 47 U. S. App. 146; 35 L. R. A. 728] 25: 267
- Against one making and selling infringing articles, though infringement claimed to be accidental. [96 Fed. 238] 37: 456
- Presumption that article adapted only for use in patented combination intended for that purpose, justifying. [80 Fed. 712; 54 U. S. App. 1] 26: 107
- Final hearing, instead of hearing on motion for *ad interim* injunction in patent case. [88 Fed. 286; 50 U. S. App. 400] 31: 533
- Sufficiency of allegations to show remedy at law inadequate. [67 Fed. 597; 29 U. S. App. 564] 14: 561
- Right to waive injunction, to prevent appeal from interlocutory decree. [75 Fed. 118; 36 U. S. App. 321; 40 U. S. App. 136] 21: 257
- Constitutionality of act authorizing enforcement by injunction suit of penalty for infringement of design patent. [58 Fed. 205; 20 U. S. App. 32] 7: 183
- Granted, unless bond for payment of damages given. [69 Fed. 250; 37 U. S. App. 250] 16: 220
- Perpetual injunction a final adjudication in favor of complainant. [76 Fed. 767; 46 U. S. App. 411] 22: 549
- Effect of decree awarding perpetual injunction and referring to ascertain damages as a bar. [76 Fed. 761; 46 U. S. App. 355] 22: 543
- Lamps made by one not preliminarily enjoined, not exempted from decree against infringement. [65 Fed. 551; 28 U. S. App. 325] 13: 40

**—Grounds for denying.**

- Laches as a defense, see Notes. 22: 211; 36: 613; 22: 203; 36: 610
- Assignee chargeable with laches of assignor, see Note, 22: 215
- Failure to establish title or show infringement as to one or more of patents no effect on right to, as to others. [81 Fed. 726; 49 U. S. App. 414] 26: 578
- Injunction against, though trouble to find and remove infringing articles. [89 Fed. 1014; 45 U. S. App. 761] 32: 463
- Entering into combination to control business to which patent relates. [53 Fed. 592; 11 U. S. App. 712] 3: 605
- Making expenditures for extension of business pending suit to test patents. [58 Fed. 572; 20 U. S. App. 111] 7: 375
- When failure to mark devices "Patented" not fatal. [77 Fed. 206; 39 U. S. App. 353] 23: 119
- Failure to work perfectly at first. [64 Fed. 799; 28 U. S. App. 146] 12: 422
- Failure of first machine built by patentee. [80 Fed. 121; 48 U. S. App. 120] 25: 323
- Effect of settlement on right to permanent injunction. [79 Fed. 653; 33 U. S. App. 731, 751] 25: 142
- That manufacture of infringing article has ceased. [64 Fed. 118; 28 U. S. App. 99] 12: 70
- Expiration of patent pending appeal. [82 Fed. 449; 50 U. S. App. 180] 27: 316

**—Sale after decree.**

- Sale of patented articles in Canada after injunction granted. [67 Fed. 163; 35 U. S. App. 281] 14: 366
- Right to continue sale of infringing articles pending appeal from decree for injunction. [72 Fed. 545; 43 U. S. App. 47] 19: 25

**—Preliminary.**

- Refusal of, discretionary. [90 Fed. 815; 61 U. S. App. 734] 33: 282
- Discretion as to issuing, where appellate court holds patent infringed. [87 Fed. 750; 59 U. S. App. 703] 31: 221
- Determining doubtful question of infringement on motion for. [95 Fed. 821] 37: 286

## PATENTS—continued.

- Not allowed in doubtful case. [69 Fed. 715; 35 U. S. App. 373] 16: 371
- Complainant's right free from doubts to entitle to preliminary injunction against. [88 Fed. 286; 50 U. S. App. 400] 31: 533
- Failure to successfully attack defendant's financial ability, complainant's right and defendant's infringement not free from doubt. [56 Fed. 718; 9 U. S. App. 556] 6: 100
- To maintain matters *in statu quo* granted, though complainant's rights doubtful. [88 Fed. 286; 50 U. S. App. 400] 31: 533
- Against infringement, where infringement not clear. [65 Fed. 517; 24 U. S. App. 563] 13: 29
- Only when proof of infringement clear. [87 Fed. 215; 57 U. S. App. 270] 30: 615  
[95 Fed. 136] 37: 27
- Proof of infringement held sufficient to justify. [77 Fed. 206; 39 U. S. App. 353] 23: 119
- When manifest that injunction will be granted at final hearing. [78 Fed. 878; 45 U. S. App. 627] 24: 378
- When denied, although devices substantially similar. [77 Fed. 285; 46 U. S. App. 254] 23: 171
- Following former decision as to allowing. [91 Fed. 665; 62 U. S. App. 528] 34: 45
- When denied, although infringement declared by another court, conditions. [77 Fed. 301; 33 U. S. App. 692] 23: 174
- Public acquiescence sustaining. [88 Fed. 286; 50 U. S. App. 400] 31: 533
- Not authorized by prior decision. [92 Fed. 364] 34: 412
- Grounds of, threat to infringe, what constitutes. [55 Fed. 487; 3 U. S. App. 541] 5: 204
- Prior judgment as basis for. [82 Fed. 690; 48 U. S. App. 716] 27: 185
- Presumption that jury obeyed instructions. Id.
- Decision in interference proceedings as ground for. [88 Fed. 286; 50 U. S. App. 400] 31: 533
- Right of complainant to make, sole object of bill. [89 Fed. 308; 60 U. S. App. 572] 32: 216
- Pending suit to restrain infringement, where infringement denied. [65 Fed. 519; 24 U. S. App. 567] 13: 31
- When infringer cannot urge that patentee will be fully compensated by money recovery. [78 Fed. 878; 45 U. S. App. 627] 24: 378
- Against disposing of patents in violation of contract. [87 Fed. 621; 50 U. S. App. 383] 31: 148
- Against water company supplying city. [80 Fed. 924; 51 U. S. App. 355] 26: 252
- Against city's use of infringing articles. [95 Fed. 823] 37: 288
- Providing for gradual removal of infringing airbrakes. [88 Fed. 258; 59 U. S. App. 592] 31: 525
- Dissolution of, upon reversal of decision of other circuit on which based. [80 Fed. 539; 39 U. S. App. 591] 25: 624
- Right to hold preliminary injunction against infringement of patent in force when timely motion for dissolution made. [89 Fed. 308; 60 U. S. App. 572] 32: 216
- Against infringement of design patent in absence of prior adjudication or proof of public acquiescence. [97 Fed. 987] 39: 32
- Decision not disturbed on appeal unless discretion improvidently exercised. [100 Fed. 462] 40: 494

**Accounting.**

- Reference to master for accounting, questions open before master. [83 Fed. 709; 54 U. S. App. 384] 28: 27

**PATENTS—continued.**

- Refusal to direct return to master for further evidence as to cost of manufacture. [82 Fed. 744; 45 U. S. App. 644] 27: 255
- Discretion to deny recommittal of reference, when no segregation between profits on infringing and noninfringing features. [51 Fed. 441; 6 U. S. App. 107] 2: 322

**Defenses.**

- What constitutes laches preventing accounting. [68 Fed. 489; 37 U. S. App. 109] 15: 520  
[75 Fed. 301; 39 U. S. App. 257] 22: 203  
[77 Fed. 612; 45 U. S. App. 223] 23: 353
- Delay in asserting rights against infringer preventing injunction. [68 Fed. 489; 37 U. S. App. 109] 15: 520
- Laches in bringing suit for injunction, delay of seven years. [75 Fed. 301; 39 U. S. App. 257] 22: 203
- Waiting fourteen years, laches preventing relief. [93 Fed. 828] 36: 610
- Delaying suit until decision sustaining patent in pending case. [53 Fed. 592; 11 U. S. App. 712] 3: 605
- Defense that machine made under patent which antedated complainant's, and expired before filing of the bill, jurisdiction. [83 Fed. 709; 54 U. S. App. 384] 28: 27
- Settlement pending suit. [79 Fed. 653; 33 U. S. App. 731, 751] 25: 142
- Plea of license as defeating Federal jurisdiction of bill for infringement. [65 Fed. 215; 24 U. S. App. 542] 12: 578
- Suit for infringement of patents which have expired. [69 Fed. 94; 34 U. S. App. 90] 16: 154

**Damages.**

- For profits from use of patented machine. [76 Fed. 227; 45 U. S. App. 105] 22: 138
- How profits measured. Id.
- When nominal. [53 Fed. 257; 7 U. S. App. 424] 3: 525  
[81 Fed. 863; 48 U. S. App. 372] 26: 652
- Only nominal damages allowed for infringement. [91 Fed. 248; 50 U. S. App. 447] 33: 485
- Only nominal damages for, where unknowingly done, and evidence insufficient as basis for calculating profits. [91 Fed. 655; 63 U. S. App. 97] 34: 39
- Giving instruction for nominal damages only, where no evidence of market value. [74 Fed. 636; 41 U. S. App. 309] 20: 568
- For infringement of patent for pioneer invention. [69 Fed. 371; 37 U. S. App. 299] 16: 259
- Considering utility and advantage to defendant. [60 Fed. 98; 8 U. S. App. 503] 8: 500
- Net profits, pending suits, infringements after statute went into effect. [58 Fed. 205; 20 U. S. App. 32] 7: 183
- Failure to mark article "Patented," liquidated profits. [58 Fed. 398; 17 U. S. App. 184] 7: 272
- Computation of, where patentee manufactures article. [94 Fed. 177] 36: 132
- Mode of estimating where value of royalty cannot be calculated with mathematical certainty. [64 Fed. 585; 29 U. S. App. 116] 12: 316
- Recovery of whole profits on infringing article. [86 Fed. 917; 57 U. S. App. 66] 30: 487
- Entire loss, for infringement of improvement, where impossible to separate value with, from value without, improvement. [67 Fed. 542; 29 U. S. App. 572] 14: 517
- Profits on entire machine, when infringement only on improvement. [51 Fed. 441; 6 U. S. App. 107] 2: 322
- Failure to separate profits on infringing, from those on non-infringing, parts. [81 Fed. 957; 53 U. S. App. 404] 27: 21



**PATENTS—continued.**

- No defense that substituted equivalents improve work of corresponding elements. [76 Fed. 227; 45 U. S. App. 105] 22: 138
- Recovery of damages for infringement, after expiration of patent, in suit commenced before. [63 Fed. 466; 24 U. S. App. 113] 11: 288
- For wanton infringement, where expense of manufacture readily computed. [94 Fed. 177] 36: 132
- Double damages for deliberate purchase of infringement after preliminary injunction. [86 Fed. 917; 57 U. S. App. 66] 30: 487
- Apportioning all damages to particular claim. [64 Fed. 585; 29 U. S. App. 116] 12: 316
- Apportionment of profits, superadded improvement, contributing to saving. [76 Fed. 227; 45 U. S. App. 105] 22: 138
- Burden as to showing source of saving. Id.
- Loss of contracts. [75 Fed. 971; 39 U. S. App. 297] 21: 584
- Resolving against infringer, doubt as to sufficiency of evidence to warrant finding of amount. [94 Fed. 177] 36: 132
- Admissibility of evidence of cost to other manufacturers. [81 Fed. 957; 53 U. S. App. 404] 27: 21
- Evidence of sales to other parties to show. [74 Fed. 636; 41 U. S. App. 309] 20: 568
- Opinion evidence as to reasonable value of right to use invention. Id.

**Penalties for infringement.**

- Person buying article from manufacturer and selling in good faith, without knowledge of infringement, not subject to penalty. [97 Fed. 791] 38: 419
- Penalty for unlicensed sale of article bearing patented design, attaches only in case of wilful infringement. [82 Fed. 813; 53 U. S. App. 556] 27: 165
- Constitutionality of act imposing penalty for infringement of design patents, and authorizing enforcement in equity. [58 Fed. 205; 20 U. S. App. 32] 7: 183
- Only one penalty for infringement of design patent for carpet, though different claims for body and border. [97 Fed. 791] 38: 419

**XV. ASSIGNMENT.****In general.**

- Right of infringer to question validity of. [81 Fed. 726; 49 U. S. App. 414] 26: 578
- Failure to anticipate defense of estoppel by assignment in bill for infringement against assignor. [63 Fed. 609; 21 U. S. App. 463] 11: 353
- Suit by assignee against assignors, assignee's default as ground of cross bill. [61 Fed. 953; 22 U. S. App. 404] 10: 189
- Omission of one patent from, sale of equitable interest under. [77 Fed. 614; 45 U. S. App. 244] 23: 355
- Contract that improvements made by employees should belong to employer, valid. [65 Fed. 864; 25 U. S. App. 239] 13: 180
- Employee's failure to assign as agreed ground for terminating contract of employment. [93 Fed. 359] 35: 345
- Agreement to assign future patents, abandonment of; what constitutes. [84 Fed. 887; 51 U. S. App. 422] 28: 561
- Preliminary injunction against disposing of patents in violation of contract to assign. [87 Fed. 621; 50 U. S. App. 383] 31: 148
- Assignee's right to sue, under assignment, on condition not to assign or license. [59 Fed. 897; 17 U. S. App. 452] 8: 357
- Substitution of assignee as party complainant. [63 Fed. 466; 24 U. S. App. 113] 11: 288

**What constitutes.**

- What constitutes, restriction on agent's authority to assign. [75 Fed. 283; 44 U. S. App. 544] 21: 329

**PATENTS—continued.**

- By agent, ratification, what constitutes. Id.  
 Transfer of exclusive right to make, use, and sell, for full term.  
     [61 Fed. 940; 17 U. S. App. 609] 10: 176  
 Assignment of patent or mere quitclaim, subject to previous contract with third person. [49 Fed. 68; 7 U. S. App. 73] 1: 169  
 Grant of any invention that one may afterwards make, assignment to bona fide purchaser. Id.

**Construction.**

- Construction of word "interfere" used in limiting the subject of assignment.  
     [79 Fed. 331; 47 U. S. App. 531] 24: 616  
 Of patents, etc., relating to "electric smelting processes and furnaces," meaning of "smelting." Id.  
 Of applications and patents relating to "electric smelting processes and furnaces," what covered. Id.  
 Practical construction of contract as to payment to patentee of expense of manufacturing patented articles. [95 Fed. 681] 37: 227  
 Provision as to cancelation. [61 Fed. 953; 22 U. S. App. 404] 10: 189  
 Provision for joint ownership of invention.  
     [61 Fed. 651; 26 U. S. App. 127] 10: 6

**Effect.**

- By way of mortgage, effect on title. [55 Fed. 982; 14 U. S. App. 312] 5: 371  
 Recital in, as to license, as notice. Id.  
 As constructive notice of prior contract with third person.  
     [49 Fed. 68; 7 U. S. App. 73] 1: 169  
 What notice assignee chargeable with.  
     [72 Fed. 496; 37 U. S. App. 664] 19: 130  
 By complainant pending litigation, effect on defendant's right under cross bill.  
     [67 Fed. 917; 35 U. S. App. 221] 15: 73  
 Effect on prior equitable rights. [83 Fed. 508; 51 U. S. App. 669] 27: 566  
 Assignor not estopped to deny infringement as against assignee.  
     [99 Fed. 90] 30: 426  
 Estoppel of assignee of future patent to claim interest in patents abandoned by him. [84 Fed. 887; 51 U. S. App. 722] 28: 561  
 Effect of, as estoppel of assignee.  
     [51 Fed. 941; 5 U. S. App. 112; 17 L. R. A. 354] 2: 555  
 Estoppel of assignor to deny validity of patent.  
     [60 Fed. 283; 21 U. S. App. 98] 8: 622  
     [63 Fed. 607; 21 U. S. App. 443] 11: 351  
     [67 Fed. 786; 33 U. S. App. 157] 14: 642  
     [82 Fed. 97; 50 U. S. App. 164] 27: 69  
 Waiver of assignor's estoppel to deny validity.  
     [63 Fed. 609; 21 U. S. App. 463] 11: 353

**Rights of assignee.**

- Purchaser from one holding as trustee or agent, as bona fide purchaser.  
     [72 Fed. 496; 37 U. S. App. 664] 19: 130  
 Rights of purchaser, without notice of outstanding, unrecorded, equitable interest. [67 Fed. 913; 35 U. S. App. 120] 15: 69  
 Laches of former owner, effect on assignee's rights.  
     [68 Fed. 489; 37 U. S. App. 109] 15: 520  
 Right of purchaser of patented article to substitute different element.  
     [75 Fed. 1005; 45 U. S. App. 95] 22: 1

**Record of.**

- Effect of certified copy of patent office, record of.  
     [76 Fed. 767; 46 U. S. App. 411] 22: 549  
 Copies of patent office records of assignment, prima facie evidence.  
     [60 Fed. 1010; 20 U. S. App. 7] 9: 336

## PATENTS—continued.

## XVI. LICENSE.

**In general.**

- Power of patentee to control his invention, see Note, 25: 280
- Consent to use, by licensee, of licensor's name, when shown.  
[52 Fed. 945; 7 U. S. App. 409] 3: 368
- Implication, from purchase of creamery, as to creamery cans.  
[56 Fed. 143; 14 U. S. App. 439] 5: 451
- Grant of exclusive right to sell before patent issued.  
[52 Fed. 945; 7 U. S. App. 409] 3: 368
- Permission, before obtaining patent, to use improvement in ferry gangway, not license city to use at another ferry.  
[91 Fed. 248; 50 U. S. App. 447] 33: 485
- To employer, to use improvements by licensor in threshing machinery, not cover patent for machinery embodying different principle, issued after employment ceases.  
[100 Fed. 94] 40: 291
- Employer's implied license to use employee's invention.  
[68 Fed. 500; 37 U. S. App. 117] 15: 531
- Who entitled as between employee and employer, to patent invented by former.  
[80 Fed. 906; 51 U. S. App. 291] 26: 243
- Right of purchaser of firm assets to use patent licensed to firm.  
[65 Fed. 215; 24 U. S. App. 542] 12: 578
- To firm of which patentee member, death of patentee not affect.  
[95 Fed. 155] 37: 392
- Effect of defendant's promoting corporation and assisting in procuring license for it.  
[53 Fed. 98; 6 U. S. App. 335] 3: 455
- Sale of patented button-fastener machine on condition for use of unpatented fasteners manufactured by seller; validity and effect.  
[77 Fed. 288; 47 U. S. App. 146; 35 L. R. A. 728] 25: 267
- Authority as to granting under power of attorney.  
[61 Fed. 940; 17 U. S. App. 609] 10: 176
- Grant in attorney's own name. Id.
- Grant of exclusive license, by agent authorized to grant non-exclusive. Id.
- Right of exclusive licensee to relief against owner and subsequent licensees from latter.  
[55 Fed. 982; 14 U. S. App. 312] 5: 371
- Licensee no right to accumulate articles during license, and deliver on orders taken after cancelation.  
[95 Fed. 823] 37: 288
- Interpretation of.  
[54 Fed. 820; 14 U. S. App. 21] 4: 597
- Contract between manufacturers acting under rival patents, construction of.  
[84 Fed. 544; 55 U. S. App. 510] 28: 492
- Exclusive right to sell, grantee not agent subject to dismissal.  
[52 Fed. 945; 7 U. S. App. 409] 3: 368
- Right to manufacture or sell in foreign countries.  
[56 Fed. 918; 18 U. S. App. 1] 6: 168
- Right of licensee to divide license and assign territory.  
[52 Fed. 945; 7 U. S. App. 409] 3: 368
- Right to terminate contract for use of patented machine, upon its destruction.  
[79 Fed. 915; 51 U. S. App. 133] 25: 235
- As to sales and management of business, rescission, what constitutes.  
[81 Fed. 535; 39 U. S. App. 713] 26: 494
- Estoppel of licensee to deny validity of patent.  
[59 Fed. 897; 17 U. S. App. 452] 8: 357  
[75 Fed. 17; 43 U. S. App. 391] 21: 198
- Or to limit or affect patent by subsequent patent.  
[58 Fed. 818; 5 U. S. App. 588] 7: 498
- Estoppel against alleged infringer by previously holding license.  
[95 Fed. 664] 37: 221

**PATENTS—continued.**

- Estoppel of licensor of patent to deny its operation.**  
 [69 Fed. 371; 37 U. S. App. 299] 16: 259
- Assignability of implied license.** [53 Fed. 250; 10 U. S. App. 500] 3: 518
- Assignability of license, rights of receiver in supplementary proceeding.**  
 [55 Fed. 982; 14 U. S. App. 312] 5: 371
- Preliminary injunction against manufacturing under license granted by complainant's president, not granted.** [98 Fed. 729] 39: 245

**Who may sue.**

- Licensee no authority to sue infringers in own name.**  
 [75 Fed. 283; 44 U. S. App. 544] '21: 329
- Licensee's right to sue, when defendant owner of legal title to patent.**  
 [56 Fed. 918; 18 U. S. App. 1] 6: 168
- Licensee, infringement by patentee.** [55 Fed. 982; 14 U. S. App. 312] 5: 371
- Licensee's right to sue after unauthorized assignment of his rights.**  
 [52 Fed. 945; 7 U. S. App. 409] 3: 368
- Right of exclusive licensee to join owner as plaintiff against his will.** Id.
- Effect of joining other and unnecessary party as plaintiff.** Id.

**Royalties.**

- Right to nondelivery of license.** [52 Fed. 752; 9 U. S. App. 25] 3: 274
- Right to, under contract for manufacture and sale of patented machines.**  
 [78 Fed. 325; 46 U. S. App. 680] 24: 107
- When pooling agreement inoperative, entitling licensor to.**  
 [86 Fed. 638; 57 U. S. App. 55] 30: 315
- Liability for license fees after termination of contract.**  
 [72 Fed. 147; 39 U. S. App. 141] 18: 490
- Licensee not subject for royalties before licensor had any rights in patent.**  
 [100 Fed. 590] 40: 571
- Liability for royalties notwithstanding change by licensee to avoid infringement.** [98 Fed. 827] 39: 314
- Reduction of, on allowing reduced royalty to third person.**  
 [66 Fed. 755; 26 U. S. App. 664] 14: 72  
 [74 Fed. 557; 39 U. S. App. 233] 20: 654
- Restoring license after forfeiture by tender of.**  
 [59 Fed. 897; 17 U. S. App. 452] 8: 357
- Effect of judgment for, as *res judicata*.**  
 [54 Fed. 820; 14 U. S. App. 21] 4: 597

**XVII. EFFECT OF PRIOR DECISIONS.****Effect of Former Decision in Same Case, see APPEAL AND ERROR.**

- General rule.** [84 Fed. 164; 51 U. S. App. 653] 28: 133
- Granting of patent, ruling that earlier device not infringed.**  
 [70 Fed. 816; 25 U. S. App. 475] 17: 430
- Ruling of patent officials that later device not infringement, weight of.** Id.
- General rule as to following new evidence.**  
 [53 Fed. 367; 3 U. S. App. 340] 3: 559  
 [53 Fed. 791; 3 U. S. App. 414] 3: 672
- Stare decisis*, rule applied in favor of prior purchaser of identical machine, held in former decision not to infringe.**  
 [83 Fed. 512; 48 U. S. App. 590] 27: 576
- Presumption arising from, in connection with other facts justifying preliminary injunction,** [53 Fed. 98; 6 U. S. App. 335] 3: 455
- When preliminary injunction denied though infringement declared by another court.** [77 Fed. 301; 33 U. S. App. 692] 23: 174
- On question of priority.** [67 Fed. 917; 35 U. S. App. 221] 15: 73

## PATENTS—continued.

- Establishing validity or determining construction of patent.  
[72 Fed. 920; 33 U. S. App. 421] 19: 237
- As to validity on final hearing, where new defense not interposed or made out.  
Id.
- Validity already adjudicated upheld, in absence of convincing additional proofs.  
[81 Fed. 178; 39 U. S. App. 652] 26: 326
- As to patent differing widely from that in suit.  
[70 Fed. 816; 25 U. S. App. 475] 17: 430
- Infringement only question considered, where validity previously adjudicated.  
[65 Fed. 551; 28 U. S. App. 325] 13: 40
- Effect of, how defeated, new defense. [61 Fed. 834; 18 U. S. App. 637] 10: 106
- Effect of, what sufficient to overcome, *ex parte* proofs of anticipation. Id.
- Effect of fact that plaintiff has entered into combination to secure monopoly.  
[53 Fed. 592; 11 U. S. App. 712] 3: 605
- Dissolution of preliminary injunction on reversal of decision of other circuit on which based.  
[80 Fed. 539; 39 U. S. App. 591] 25: 624
- When prior suit opened to admit defense, requiring bond from complainant to indemnify defendant.  
[55 Fed. 485; 3 U. S. App. 579] 5: 202
- Of other circuit court sustaining patent.  
[69 Fed. 250; 37 U. S. App. 250] 16: 220
- As to duty of circuit court of appeals to defer to.  
[51 Fed. 229; 1 U. S. App. 283] 2: 165  
[53 Fed. 307; 3 U. S. App. 340] 3: 559  
[53 Fed. 791; 3 U. S. App. 414] 3: 672  
[58 Fed. 784; 20 U. S. App. 146] 7: 493
- Effect of previous adjudication on circuit court of appeals, see  
Notes, 3: 565; 27: 427; 32: 475
- By circuit court of appeals of other circuit, as to validity of patent.  
[72 Fed. 171; 33 U. S. App. 417] 18: 502  
[96 Fed. 978] 37: 641
- Following decision of other circuit court of appeals as to allowing preliminary injunction against infringement. [91 Fed. 665; 62 U. S. App. 528] 34: 45
- Following decision of circuit court of appeals of other circuit.  
[92 Fed. 146; 63 U. S. App. 626] 34: 248
- May re-examine when question of invention presented on face of patent.  
[58 Fed. 784; 20 U. S. App. 146] 7: 493
- Decision of circuit court of appeals of other circuit not prevent inquiry into validity of patent on merits. [89 Fed. 333; 60 U. S. App. 325] 32: 231
- Weight, on appeal, of prior decisions on same patent, controlling decision appealed from. [84 Fed. 164; 51 U. S. App. 653] 28: 133
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Spring tooth harrows.	[74 Fed. 236; 46 U. S. App. 70]	20: 410
Starch, process of making, from corn.	[84 Fed. 977; 56 U. S. App. 158]	28: 594
Stem-winding watches.	[52 Fed. 215; 9 U. S. App. 55]	3: 42
	[81 Fed. 957; 53 U. S. App. 343]	27: 21
Stone breakers.	[85 Fed. 441; 57 U. S. App. 343]	29: 261
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Temperature regulators.	[85 Fed. 863; 53 U. S. App. 681]	29: 459
Toy locomotive.	[64 Fed. 594; 24 U. S. App. 460]	12: 319
Tubs, machine for trussing.	[80 Fed. 293; 53 U. S. App. 104]	25: 426
Waistband fasteners.	[93 Fed. 677]	35: 537
Water-closets.	[89 Fed. 297; 60 U. S. App. 338]	32: 205
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Car coupler.	[77 Fed. 739; 40 U. S. App. 728]	23: 433
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Cars, improvement in running gear for.	[77 Fed. 432; 40 U. S. App. 482]	23: 223
Case for exhibiting decorative art at graves, improved.	[85 Fed. 437; 56 U. S. App. 545]	29: 257
Cash carriers.	[59 Fed. 776; 19 U. S. App. 360]	8: 265
Coffee roasting machines.	[62 Fed. 389; 27 U. S. App. 122]	10: 435
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Gridirons.	[62 Fed. 389; 27 U. S. App. 122]	10: 435
Hay-baling press.	[81 Fed. 726; 49 U. S. App. 414]	26: 578
	[84 Fed. 463; 49 U. S. App. 569]	28: 464
Hay press.	[81 Fed. 726; 49 U. S. App. 414]	26: 578
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Spring beds.	[58 Fed. 705; 19 U. S. App. 239]	7:439
Steak broilers.	[62 Fed. 389; 27 U. S. App. 122]	10:435
Steam engines for street cars, improvement in.	[77 Fed. 432; 40 U. S. App. 482]	23:223
Steam road wagons, improvement in.		Id.
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Waffle irons.	[62 Fed. 389; 27 U. S. App. 122]	10:435
Wagon stake pocket.	[50 Fed. 536; 4 U. S. App. 317]	1:575
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[67 Fed. 837; 21 U. S. App. 658] 15: 33

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[68 Fed. 76; 37 U. S. App. 86] 15: 264

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[83 Fed. 66; 53 U. S. App. 580] 27: 442

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[59 Fed. 372; 16 U. S. App. 465] 8: 155

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[52 Fed. 641; 9 U. S. App. 34] 3: 244

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[65 Fed. 341; 22 U. S. App. 669] 12: 643

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[74 Fed. 769; 40 U. S. App. 75] 21: 83

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[67 Fed. 837; 21 U. S. App. 658] 15: 33

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[55 Fed. 366; 13 U. S. App. 57] 5: 134

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[76 Fed. 930; 48 U. S. App. 55] 22: 622

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[80 Fed. 665; 54 U. S. App. 35] 26: 75

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[87 Fed. 813; 58 U. S. App. 213] 31: 235

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[48 Fed. 780; 2 U. S. App. 40] 1: 93

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[89 Fed. 685; 60 U. S. App. 705] 32: 318

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[57 Fed. 905; 12 U. S. App. 640] 6: 627

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[85 Fed. 19; 42 U. S. App. 686] 28: 659

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**POSTOFFICE.**

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[67 Fed. 1000; 37 U. S. App. 71] 15: 153

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[75 Fed. 986; 43 U. S. App. 678; 34 L. R. A. 509] 21: 586

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[82 Fed. 990; 55 U. S. App. 42] 27: 294

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[63 Fed. 426; 24 U. S. App. 25] 12: 339

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[87 Fed. 324; 58 U. S. App. 729] 30: 670

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[87 Fed. 320; 58 U. S. App. 140] 30: 686

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[92 Fed. 355] 34: 403

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[60 Fed. 597; 23 U. S. App. 289] 9: 152

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[58 Fed. 818; 5 U. S. App. 588] 7: 498

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[61 Fed. 804; 18 U. S. App. 692] 10: 83

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[91 Fed. 88; 62 U. S. App. 332] 33: 351

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[51 Fed. 493; 4 U. S. App. 642] 2: 335

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[51 Fed. 130; 4 U. S. App. 603] 2: 126

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[51 Fed. 97; 4 U. S. App. 416] 2: 110

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[65 Fed. 178; 27 U. S. App. 547; 27 L. R. A. 629] 12: 544

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[76 Fed. 157; 40 U. S. App. 245] 22: 30

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[58 Fed. 850; 15 U. S. App. 279] 7: 518

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[63 Fed. 192; 27 U. S. App. 346] 11: 128

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[63 Fed. 192; 27 U. S. App. 346] 11: 128

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[63 Fed. 192; 27 U. S. App. 346] 11: 128

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     [49 Fed. 529; 7 U. S. App. 33] 1: 345
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- Presumption as to selection of indemnity lands. Id.
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     [58 Fed. 850; 15 U. S. App. 279] 7: 518
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## VIII. LEASES.

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- Judicial notice by Federal court of acts for construction, operation, and leasing of state railroad. [61 Fed. 592; 22 U. S. App. 187] 9: 646
- Act giving all railroad corporations owning main line power to lease branch lines not special. [91 Fed. 299, 321; 62 U. S. App. 49, 697] 33: 517
- Priority of judgment against lessor over mortgage bondholders in earnings in hands of lessee's receiver. [86 Fed. 398; 57 U. S. App. 136] 30: 133
- Duty of both lessor and lessee to avoid injury to other trains. [97 Fed. 239] 38: 143
- Lessee cannot acquire lien prior to mortgage which it agreed to take up. [88 Fed. 913; 60 U. S. App. 265] 32: 130
- Charging cost of bridges rebuilt by lessee's receiver on lessor's interest. [95 Fed. 336] 37: 88
- Right of stockholder in lessee corporation to question lessor's power to purchase leased line. [91 Fed. 299, 321; 62 U. S. App. 49, 697] 33: 517
- Lessor company proper but not necessary party to action for accounting under contract for joint operation. [61 Fed. 705; 22 U. S. App. 359] 10: 20
- When lessor's breach of particular stipulation not warrant recovery as for a total breach. [83 Fed. 676; 49 U. S. App. 752] 28: 1
- Adoption of, by lessee's receivers. [88 Fed. 140; 59 U. S. App. 330] 31: 427
- Adoption of, by receiver, what constitutes. [86 Fed. 517; 58 U. S. App. 604] 30: 235

**Validity; authority.**

- Of competing and parallel railroad, void *ab initio*. [92 Fed. 735] 34: 639
- When lines parallel within act forbidding. [91 Fed. 299, 321; 62 U. S. App. 49, 697] 33: 517
- When lines competing within act prohibiting lease of competing line. *Id.*
- Lease of one company's line to another owning all its stock and bonds, validity. [51 Fed. 309; 10 U. S. App. 98] 2: 174
- Of branch-railroad lines, act permitting, repealed. [91 Fed. 299, 321; 60 U. S. App. 49, 697] 33: 517
- Contract for sale of road and lease until clear title transferable, valid as to lease. [88 Fed. 140; 59 U. S. App. 330] 31: 427
- Purchaser at foreclosure sale full authority to lease. [91 Fed. 299, 321; 62 U. S. App. 49, 697] 33: 517
- Approval by stockholders before directors power to conclude. *Id.*
- Agreement that lessee not liable for damages for accidents, valid. [93 Fed. 543] 35: 423
- Validity of lease exempting lessor from liability for damage by fire. [70 Fed. 201; 36 U. S. App. 152; 30 L. R. A. 193] 17: 62

**Lessor's liability.**

- Lessor not liable for negligent management of road not under control. [74 Fed. 279; 46 U. S. App. 41] 20: 52
- Lessor liable for personal injuries from lessee's negligent operation of road. [70 Fed. 442; 25 U. S. App. 415; 30 L. R. A. 823] 17: 181
- Lessor's liability to own passengers and shippers for injuries from lessee's negligence in operating trains. [97 Fed. 239] 38: 143

**Lessee's liability—In general.**

- Liability of lessee for proportionate share of costs of lessor in contesting increase of assessment. [88 Fed. 140; 59 U. S. App. 330] 31: 427
- Liability of leasing company to account to creditor of lessor for profits. [78 Fed. 724; 51 U. S. 1] 24: 216
- Obligations included in covenant to pay expenses incurred as common carriers, warehousemen "or otherwise." [86 Fed. 398; 57 U. S. App. 136] 30: 133
- Lessee's liability on covenant to pay interest on lessor's mortgage bonds. *Id.*

**RAILROADS—continued.**

- Assessing to street-railroad company, railroad right of way leased to it.  
[93 Fed. 51] 35: 192
- Taxes already levied not included in lessee's agreement to pay "all taxes."  
[73 Fed. 559; 25 U. S. App. 626] 19: 559
- Lessee's primary liability for taxes previously levied. Id.
- Lessee's liability for taxes for proportionate part of year. Id.
- Lessor's claim for taxes paid not entitled to priority in funds in receiver's hands.  
[88 Fed. 140; 59 U. S. App. 330] 31: 427
- Evidence admissible in suit by lessor to recover from lessee amount of taxes paid. Id.
- Lessor liable to public for acts and defaults of lessee in operating road.  
[86 Fed. 398; 57 U. S. App. 136] 30: 133
- Liability of lessee for injuries caused by negligence of its employees.  
[86 Fed. 447; 57 U. S. App. 473] 32: 295

**—For rent.**

- Liability of corporation owning substantially entire stock of lessee for rent.  
[92 Fed. 735] 34: 639
- When decree for payment of rent to creditor of lessor proper; when improper.  
[78 Fed. 724; 51 U. S. App. 1] 24: 216
- No suit for rent maintainable where lease void because in violation of constitutional prohibition against consolidation. [92 Fed. 735] 34: 639
- Railroad company operating two roads using depot stoppoted to claim rental illegal as to one road. [89 Fed. 648; 60 U. S. App. 675] 32: 234
- Unpaid rentals first lien on property in receiver's hands.  
[86 Fed. 517; 58 U. S. App. 604] 30: 235
- Track rentals not entitled to priority over mortgaged bonds in funds in receiver's hands. [87 Fed. 500; 59 U. S. App. 694] 31: 89
- Rent paid by receiver as operating expense.  
[80 Fed. 517; 58 U. S. App. 604] 30: 235
- Railroad receiver liable for reasonable rental only.  
[74 Fed. 88; 43 U. S. App. 300] 20: 282

**IX. BONDS.****In general.**

- Equity jurisdiction of suit on subscription agreement.  
[87 Fed. 51; 57 U. S. App. 730] 30: 520
- Issued in exchange for bonds of reorganized company.  
[92 Fed. 428] 34: 431
- Deposit of bonds under reorganization agreement not a reissue.  
[76 Fed. 38; 46 U. S. App. 164] 22: 52
- Computation of amount received for bonds issued to contractor for work to be performed. [95 Fed. 497] 36: 155
- Bonds exchanged for other railroad property, method of valuing property.  
[54 Fed. 569; 13 U. S. App. 1] 4: 511
- Lienor's right to contest bonds. [57 Fed. 753; 16 U. S. App. 115] 6: 539
- Right of bondholders to contest prior lien, common enterprise of two companies. Id.
- Subsequent creditor's right to attack bonds issued to contractor after full settlement. [95 Fed. 497] 36: 155
- Subsequent creditor's right to attack sale to directors for less than par. Id.
- Sale of property and franchises, rights of dissenting stockholders as against holders of purchaser's bonds. [54 Fed. 759; 6 U. S. App. 469] 4: 561
- Director acquiring interest in bonds after issuance. [95 Fed. 497] 36: 155
- Bonds purchased by directors from contractor not void for verbal option given. Id.
- Right of purchaser of certificates representing.  
[87 Fed. 241; 58 U. S. App. 766] 30: 621

**RAILROADS—continued.**

- Right of railroad to pledge. [54 Fed. 759; 6 U. S. App. 469] 4: 561  
 Liability of mortgage trustee to bondholders for neglect to record mortgage. [79 Fed. 848; 51 U. S. App. 194] 25: 208  
 Who is bona fide purchaser of bonds, right of pledgee with notice to pledgor's standing. [75 Fed. 433; 43 U. S. App. 550] 22: 378  
 Bona fide purchasers, burden of showing want of notice and good faith. Id.

**Guaranty—In general.**

- Negotiability of guaranty indorsed on bond. [75 Fed. 433; 43 U. S. App. 550] 22: 378  
 Defenses against, in hands of assignee. Id.  
 Guaranty of bonds, bona fide purchasers, defense. Id.  
 Right of guarantor to set off claim for reimbursement out of deposited bond against breach of guaranty. [81 Fed. 454; 54 U. S. App. 67] 26: 472  
 Guaranty of bonds, subrogation of guarantor. [60 Fed. 794; 22 U. S. App. 54] 9: 264  
 Right of guarantor to be reimbursed out of deposited bonds. [81 Fed. 454; 54 U. S. App. 67] 26: 472  
 Right of lessee of guarantor to be reimbursed out of bonds deposited, for payment of obligations. Id.  
 Guaranty of, rescission after breach by retaking stock assigned as consideration. [82 Fed. 272; 54 U. S. App. 103] 27: 370  
 Cancellation of, by retaking of stock deposited to secure agreement. [81 Fed. 454; 54 U. S. App. 67] 26: 472

**—Of bonds of other road.**

- Estoppel to deny liability on guaranty on bonds of other company as against bona fide purchasers. [98 Fed. 666] 39: 220  
 Power of foreign company reincorporated. [75 Fed. 433; 43 U. S. App. 550] 22: 378  
 Without petition of majority stockholders, not *ultra vires*. Id.  
 Exercise of power, necessity of sanction by stockholders. Id.  
 Mode of exercising power, necessity of petition of majority stockholders. Id.  
 Bonds of what road may be guaranteed. Id.  
 Rights of purchaser of bonds with notice that guaranty not authorized by petition of majority of stockholders. Id.  
 Railroad company in Indiana no power to guarantee bonds of railroad operating such line across adjoining state. [98 Fed. 666] 39: 220  
 Individual bondholder's right to first raise on appeal authority of trustee to maintain action against guarantor of bond secured. Id.

**X. MORTGAGES.****In general.**

- Secretary *de facto* sealing mortgage. [52 Fed. 63; 2 U. S. App. 409] 2: 615  
 Failure to advertise meeting of stockholders authorizing, effect of. [67 Fed. 84; 31 U. S. App. 387] 14: 314  
 Mortgage of swamp land by company having only equitable title. [52 Fed. 63; 2 U. S. App. 409] 2: 615  
 Ratification of unauthorized mortgage. Id.  
 Lessee's liability on covenant to pay interest on lessor's mortgage bonds. [86 Fed. 398; 57 U. S. App. 136] 30: 133  
 Easement to operate telegraph line on railroad right of way granted by mortgagor ceases on entry by mortgages. [90 Fed. 379; 61 U. S. App. 741] 33: 113

**Property covered.**

- Power to mortgage after-acquired property. [94 Fed. 275] 36: 241  
 Power to mortgage property acquired afterwards by itself or successor. [68 Fed. 263; 31 U. S. App. 486] 15: 397

**RAILROADS—continued.**

- Power of terminal and warehouse company to give mortgage of present and future acquired property. [82 Fed. 124; 49 U. S. App. 523] 27: 73
- Estoppel of improvement company to deny railroad companies title to rolling stock. [48 Fed. 850; 2 U. S. App. 1] 1: 116
- Estoppel of seller to improvement company, reservation of title, after-acquired property. [48 Fed. 865; 2 U. S. App. 120] 1: 130  
[48 Fed. 864; 2 U. S. App. 106] 1: 139
- Resale by improvement company to seller. [48 Fed. 864; 2 U. S. App. 106] 1: 139
- Subsequently acquired lease of belt railway. [60 Fed. 794; 22 U. S. App. 54] 9: 264
- After-acquired property, cars sold under conditional contract, failure to record reservation. [48 Fed. 868; 2 U. S. App. 95] 1: 133
- Act validating conditional sales of rolling stock. Id.
- Of property and franchises including locomotive and rolling stock. [64 Fed. 450; 29 U. S. App. 110] 12: 215
- Terminal property, title to which in third person, not included in mortgage not specially mentioning same. [89 Fed. 410; 60 U. S. App. 647] 32: 238

**Priorities—In general.**

- For Priority of Claims for Supplies, etc., over Mortgage, see also RECEIVERS.
- Decree preferring claims to be subsequently adjudicated. [80 Fed. 180; 53 U. S. App. 44] 25: 364
- Appeal with supersedeas from subsequent adjudication of claim. Id.
- Right of surety to be subrogated to preference. Id.
- Right of surety on supersedeas bond to preference in proceeds of foreclosure. [76 Fed. 74; 43 U. S. App. 643] 22: 67
- Preference of outstanding original bonds, right to set aside exchange of original for reissued bond. [78 Fed. 49; 42 U. S. App. 353] 23: 636
- Superior rights of rival claimants of bonds secured not proper issue in foreclosure suit. [92 Fed. 428] 34: 431
- No lien created by agreement to have advances for purchase of railroad secured by mortgage. [68 Fed. 24; 32 U. S. App. 348] 15: 189
- Waiver by first mortgagee of right to object to priority of receiver's certificate issued in suit by subsequent mortgagee. [75 Fed. 193; 41 U. S. App. 339] 21: 291
- Acquiescence in issuance of such certificates. Id.
- Committee appointed by bondholders no power to consent that receiver's certificates constitute lien prior to mortgage. [96 Fed. 636] 37: 528
- Order making receiver's certificates prior to lien of mortgage, in proceeding to which mortgage trustee not party. Id.
- Displacing lien of prior mortgages to pay operating expenses during receivership. [95 Fed. 850] 37: 396
- Right to preference for supplies furnished lost by taking note. [71 Fed. 916; 37 U. S. App. 523] 18: 386
- One company assuming management of another as supplier of materials or contractor with latter. [81 Fed. 454; 82 Fed. 272; 54 U. S. App. 67, 103] 26: 472
- Priority of mileage for use of palace cars. [84 Fed. 18; 55 U. S. App. 170] 28: 263
- Priority of lien of vendor of right of way. [57 Fed. 753; 16 U. S. App. 115] 6: 539
- Priority of mechanic's lien over mortgage securing bonds. [83 Fed. 593; 55 U. S. App. 96] 27: 620
- Existing mortgages superior to mechanic's lien for work done. [95 Fed. 850] 37: 396
- Inferior to lien for destruction of private right of way by constructing railroad over. [90 Fed. 593; 61 U. S. App. 714] 33: 189

**RAILROADS—continued.**

- Provision as to lien in decree of foreclosure, effect on priority.  
[68 Fed. 263; 31 U. S. App. 486] 15: 397
- Bondholders estoppel by laches to allege invalidity of prior liens.  
[65 Fed. 882; 27 U. S. App. 631] 13: 186
- Right of subsequent general creditor to contest mortgage as unlawful preference.  
[57 Fed. 753; 16 U. S. App. 115] 6: 539
- Lessee agreeing to take up mortgage cannot acquire lien prior to.  
[88 Fed. 913; 60 U. S. App. 265] 32: 130

**—Between mortgage and judgment.**

- Street railroads not within provision making judgment against "any railway corporation" prior to mortgage. [88 Fed. 588; 59 U. S. App. 403] 32: 46
- Mortgage covering real and personal property of, want of affidavit, priority of judgment. [82 Fed. 936; 48 U. S. App. 744] 27: 268
- Prior to subsequent judgment on after-acquired property.  
[94 Fed. 275] 36: 241
- Priority of judgment for tort over pre-existing liens.  
[83 Fed. 336; 48 U. S. App. 560] 27: 541
- Of judgment in suit for personal injuries over mortgage.  
[70 Fed. 442; 25 U. S. App. 415; 30 L. R. A. 823] 17: 181
- Priority of mortgage over subsequent judgment against company for personal injuries. [79 Fed. 227; 48 U. S. App. 324] 24: 511
- Preference out of current income of judgment for injuries over mortgage.  
[79 Fed. 471; 49 U. S. App. 191] 25: 39
- Claim that when accident occurred road was operated by agent of bondholders.  
Id.
- Judgment for damages for injuries not paramount to lien of existing mortgage.  
[79 Fed. 748; 48 U. S. App. 326] 25: 194
- Judgment for personal injuries preferred over purchaser on foreclosure.  
[70 Fed. 442; 25 U. S. App. 415; 30 L. R. A. 823] 17: 181
- Against railroad company, inferior to lien of judgment for prior injury.  
[68 Fed. 758; 25 U. S. App. 257] 15: 651
- Judgment against company for personal injuries after foreclosure sale, prior lien of.  
[85 Fed. 75; 56 U. S. App. 122] 29: 35
- Priority over judgment as to surplus earnings accumulated in receiver's hands.  
[84 Fed. 274; 55 U. S. App. 191] 28: 384
- Effect of statute declaring that mortgage shall not be valid against judgments for certain claims.  
[85 Fed. 75; 56 U. S. App. 122] 29: 35

**Rights of mortgagees.**

- Mortgagee's rights to income after default. [94 Fed. 275] 36: 241
- Mortgagee's rights to rents and profits on application for receiver. Id.
- Transfer without consideration of equity of redemption to mortgagee not vest entire title in.  
[95 Fed. 551] 37: 156

**Sale by trustees.**

- Right of trustee in first mortgage to sell second mortgage bonds pledged to it.  
[87 Fed. 813; 58 U. S. App. 213] 31: 235
- Power of trustees in, to make warranty deed.  
[70 Fed. 303; 36 U. S. App. 136] 17: 401
- New company's liability on failure of title to lands sold under warranty by trustees in mortgage. Id.

**Foreclosure—In general.**

- Federal jurisdiction of suit to foreclose deed absolute in form.  
[72 Fed. 112; 30 U. S. App. 635] 18: 464
- Foreclosure by bondholders. [55 Fed. 131; 2 U. S. App. 606] 5: 53
- Officers admitting allegations of bill, not fraudulent or collusive. Id.

**RAILROADS—continued.**

Intervention by claimant of mortgage bonds in foreclosure suit.

[92 Fed. 428] 34: 431

Determining amount to be paid by receiver to retain possession of rolling stock.

[48 Fed. 875; 2 U. S. App. 113] 1: 140

Compensation of permanent masters. [62 Fed. 529; 23 U. S. App. 524] 10: 541

Allowance of counsel fees on foreclosure.

[64 Fed. 450; 29 U. S. App. 110] 12: 215

Defunct railroad company not necessary party to appeal from decree of foreclosure.

[58 Fed. 6; 16 U. S. App. 37] 7: 3

**—Decree.**

Conclusiveness of, see JUDGMENT.

Decree foreclosing allowed though claims of other creditors not adjusted.

[95 Fed. 497] 36: 155

What property covered by. [66 Fed. 224; 23 U. S. App. 549] 13: 410

Effect on lien left unadjudicated. [68 Fed. 263; 31 U. S. App. 486] 15: 397

Directions in, for sale. [58 Fed. 473; 8 U. S. App. 461] 7: 322

Reservation by decree of lien for purchase money.

[80 Fed. 180; 53 U. S. App. 44] 25: 364

Subsequent purchasers bound thereby. Id.

Right of holders of preferred claims subsequently adjudicated to enforce lien. Id.

Allowance of time for payment after entry of decree.

[60 Fed. 794; 22 U. S. App. 54] 9: 204

When preliminary injunction to stay sale under properly denied.

[74 Fed. 759; 40 U. S. App. 117] 21: 78

Modifying, after term, decree confirming master's report.

[70 Fed. 643; 30 U. S. App. 504] 17: 310

Stockholder bound by judgment of foreclosure. [98 Fed. 489] 39: 126

Federal court, stockholder enjoined from maintaining suit in state court, to place road in hands of receiver after foreclosure in Federal court. Id.

**—Sale.**

Sale on foreclosure subject to existing claims.

[75 Fed. 54; 33 U. S. App. 491] 21: 219

Right to interest on claim for supplies. Id.

Free of liens, reserving right to redeem.

[58 Fed. 473; 8 U. S. App. 461] 7: 322

Subject to outstanding obligations of receiver. Id.

Discretion of court as to acceptance of bid at special master's sale.

[80 Fed. 829; 47 U. S. App. 621] 26: 165

Ordering separate sale of part covered by vendor's lien to pay same.

[90 Fed. 189; 61 U. S. App. 531] 32: 571

As entirety, of several divisions, each covered by separate first mortgage.

[87 Fed. 392; 58 U. S. App. 737] 31: 15

Effect on lien of sale of property to pay certificates issued by receiver of railroad to which it was subsequently conveyed.

[79 Fed. 196; 48 U. S. App. 273] 24: 482

Company dissolved *de facto* by foreclosure sale of entire property and franchise.

[95 Fed. 497] 36: 155

Burden of showing that land did not pass on.

[66 Fed. 224; 23 U. S. App. 549] 13: 410

**—Distribution of proceeds.**See also *supra*, **Priorities.**

Time for filing claims against property sold on foreclosure.

[93 Fed. 349] 35: 335

Requiring all creditors of company dissolved *de facto* to present claims in pending creditors' suit.

[95 Fed. 497] 36: 155

C. C. A.—46.

**RAILROADS—continued.**

- Payment for supplies furnished before the receivership.  
[61 Fed. 150; 23 U. S. App. 363] 9: 401
- Authorizing receiver to pay current pay rolls.  
[75 Fed. 54; 33 U. S. App. 491] 21: 219
- Supply accounts incurred prior to appointment. Id.
- Equity of one furnishing supplies before appointment of receivers, effect of becoming party to proceedings. Id.
- Delay in interposing claim, for supplies furnished before receivership, effect of. Id.
- Delay of receivers in making payment, protection against. Id.
- Diversion of earnings, what amounts to.  
[58 Fed. 473; 8 U. S. App. 461] 7: 322
- Receiver's certificates for balances due before appointment.  
[62 Fed. 205; 8 U. S. App. 547] 10: 323
- Taking note for balance as waiver of payment from proceeds. Id.
- Ordering payment of vendor's lien from proceeds of foreclosure sale.  
[90 Fed. 189; 61 U. S. App. 531] 32: 571
- Payment out of proceeds applicable to bonds, of amount agreed by the organization committee to be paid for outstanding claims.  
[78 Fed. 225; 41 U. S. App. 663] 24: 73

**—Liabilities of purchaser.**

- Reservation of rights of intervening parties.  
[49 Fed. 426; 4 U. S. App. 154] 1: 307
- Proper practice by purchaser, filing supplemental bill. Id.
- Purchaser on foreclosure bound by contract for rent of depot.  
[89 Fed. 648; 60 U. S. App. 675] 32: 284
- Payment of claim adjudicated after confirmation of sale.  
[61 Fed. 772; 18 U. S. App. 628] 10: 50
- Adoption by purchaser of option clause of coal contract, what constitutes.  
[85 Fed. 133; 42 U. S. App. 748] 29: 50
- Property liable in purchaser's hands for claim for injuries during receivership.  
[93 Fed. 349] 35: 335
- Duty of purchaser of road from receiver to settle claim for negligent injury during receivership.  
[97 Fed. 239] 38: 143
- Purchaser at foreclosure sale takes subject to current liabilities of receiver.  
[94 Fed. 716] 36: 437
- Purchaser at master's sale affected with notice of subsequent steps.  
[80 Fed. 829; 47 U. S. App. 621] 26: 165
- Election of purchaser to take subject to traffic contracts, what constitutes. Id.
- Outstanding traffic contracts, right of state to intervene, though not formal party to contract. Id.
- Purchaser on foreclosure bound by decree confirming sale.  
[93 Fed. 349] 35: 335
- Estoppel by decree from objecting to payment of claim.  
[55 Fed. 758; 12 U. S. App. 227] 5: 264

**—Rights of purchaser.**

- Who is a bona fide purchaser, corporation formed by bondholders.  
[80 Fed. 180; 53 U. S. App. 44] 25: 364
- Outright purchasers, though representing bondholders and mortgagees.  
[95 Fed. 551] 37: 156
- Purchaser at foreclosure sale full authority to lease.  
[91 Fed. 299, 321; 62 U. S. App. 49, 697] 33: 517
- To repayment of taxes out of fund in receiver's hands. [96 Fed. 907] 37: 615
- To payment of interest on first-mortgage bond, subject to which sale made. Id.
- To reimbursement for attorney's fees and expenses incurred in setting aside confirmation.  
[79 Fed. 222; 52 U. S. App. 69] 24: 506

**RAILROADS—continued.**

- To earnings of road after confirmation without paying purchase money.  
[89 Fed. 648; 60 U. S. App. 675] 32: 284
- To earnings as against holders of bonds subject to which sale made.  
[79 Fed. 215; 52 U. S. App. 79] 24: 500
- To contest extent of lien adjudged prior to mortgage.  
[87 Fed. 288; 58 U. S. App. 120] 30: 648
- To contest allowance of receiver's expenses at bondholder's instigation.  
[87 Fed. 505; 59 U. S. App. 74] 31: 94
- Subrogation to receivership creditors' claims when required to pay receivership expenses as part of purchase price.  
[91 Fed. 22; 61 U. S. App. 678] 33: 313
- Lien on road discharged by the deposit of fund to pay, although fund lost by insolvency of bank in which deposited.  
[95 Fed. 560] 37: 165

**—Rights of purchaser's assignee.**

- To question proceedings. [85 Fed. 75; 56 U. S. App. 122] 29: 35
- To set up subsequent purchase in other proceedings against superior liens. Id.

**—Redemption.**

- Appraisalment as prerequisite to sale, redemption.  
[60 Fed. 794; 22 U. S. App. 54] 9: 264
- Right of separate redemption on consolidation of mortgaged roads.  
[68 Fed. 263; 31 U. S. App. 486] 15: 397

**XI. RAILROAD AID BONDS.****In general.**

- Prima facie evidence of compliance with statute, as to filing plat of survey of line of road.  
[97 Fed. 145] 38: 84
- Joint bonds by different precincts. [61 Fed. 191; 22 U. S. App. 115] 9: 442
- Joint subscription by one precinct and part of another, property taxable to pay bonds. Id.
- In exchange for stock, agreement to sell stock at nominal figure.  
[49 Fed. 628; 9 U. S. App. 1] 1: 405
- Validity not affected by option, not acted on, to leave city off line.  
[69 Fed. 58; 30 U. S. App. 295] 16: 125
- Curing invalidity in subscription to stock and issue of bonds.  
[49 Fed. 628; 9 U. S. App. 1] 1: 405
- Who bona fide purchasers of bonds issued before performance of requisite conditions.  
[72 Fed. 623; 43 U. S. App. 21] 19: 44
- Lien of, on entire land purchased with proceeds.  
[66 Fed. 224; 23 U. S. App. 549] 13: 410
- Liability of city unauthorized to issue, on ground of benefit from construction of railroad and depot.  
[99 Fed. 663] 40: 58
- Time of maturity of bonds issued by township.  
[51 Fed. 362; 4 U. S. App. 622] 2: 272
- Bonds issued by part of county, payment of.  
[61 Fed. 191; 22 U. S. App. 115] 9: 442
- Defense to bonds, *ultra vires* agreement of company.  
[57 Fed. 149; 12 U. S. App. 551] 6: 296
- Ratification of issue to consolidated company.  
[69 Fed. 58; 30 U. S. App. 295] 16: 125
- Estoppel by recital in. [51 Fed. 302; 4 U. S. App. 622] 2: 272
- Recitals in, as estoppel to show invalidity as donation.  
[73 Fed. 917; 34 U. S. App. 680] 20: 227  
[73 Fed. 927; 34 U. S. App. 686] 20: 232
- Right of company named as party to hold in escrow to maintain suit to compel delivery.  
[93 Fed. 579] 35: 460



## RAILROADS—continued.

**Power to issue.**

- Power of county to issue bonds in aid of standard-gauge road.  
[57 Fed. 149; 12 U. S. App. 551] 6:296
- Authority of counties to issue under constitutional provision.  
[92 Fed. 576] 34:553
- Power to issue by city succeeding to town which subscribed for stock.  
[74 Fed. 528; 41 U. S. App. 68] 20:635
- Constitutionality of statute authorizing municipal township to issue.  
[62 Fed. 718; 22 U. S. App. 510] 10:611
- Charter provision permitting issue of, in any amount, not invalid.  
[68 Fed. 849; 25 U. S. App. 354] 16:28
- Legislative power to authorize municipal corporations to issue. Id.
- For stock of what railroads county may subscribe. [96 Fed. 284] 37:484
- Issuance authorized before completion of road through township.  
[97 Fed. 145] 38:84

**Conditions.**

- Condition of county issuing bond. [61 Fed. 191; 22 U. S. App. 115] 9:442
- Condition of delivery, bond to apply proceeds. Id.
- Issuance not authorized till road actually constructed "through" county.  
[72 Fed. 623; 43 U. S. App. 21] 19:44
- What construction of road through county within provision of. Id.
- Provision for registration of voters on issuance, valid.  
[74 Fed. 528; 41 U. S. App. 68] 20:635

**Pleadings.**

- Pleadings in action on. [61 Fed. 191; 22 U. S. App. 115] 9:442
- Averments as to election. Id.
- Action, pleading, reservation as to time of payment. Id.

## XII. STOCK.

See also CORPORATIONS.

- Making preferred stock lien on property, as well as net earnings.  
[95 Fed. 497] 36:155
- Overcapitalization, what conclusive as to value of property.  
[54 Fed. 569; 13 U. S. App. 1] 4:511
- Right of foreign company to hold and vote stock in domestic company.  
[91 Fed. 299, 321; 62 U. S. App. 49, 697] 33:517
- Stock issued in exchange for stock of reorganized company.  
[92 Fed. 428] 34:431
- Validity of stock issued in payment for construction of road.  
[99 Fed. 114] 39:431

## XIII. TAXES.

Lessee's liability for, see *supra*, VIII.

- Assessment impliedly annulled by act relating to taxation of railroad property.  
[88 Fed. 350; 60 U. S. App. 166] 31:537
- Land claimed by railroad under congressional grant taxable.  
[83 Fed. 358; 48 U. S. App. 620] 28:412
- Taxation by state, of land included in grant to Northern Pacific.  
[54 Fed. 67; 7 U. S. App. 502] 4:193
- Railroad right of way leased to street-railway company assessed to such company.  
[93 Fed. 51] 35:192
- Market value of bonds and stock considered in valuing property for taxation.  
[88 Fed. 350; 60 U. S. App. 166] 31:537
- Assessing railroad property at full value, when other property assessed at less. Id.
- Penalty for delinquency in payment of taxes.  
[67 Fed. 84; 31 U. S. App. 387] 14:314

**RAILROADS—continued.**

Enforcement against railroad receiver.

[81 Fed. 921; 52 U. S. App. 399] 27: 1

Railroad lessee's primary liability for tax previously levied.

[73 Fed. 559; 25 U. S. App. 626] 19: 559

Enjoining collection of against property in receiver's hands.

[87 Fed. 789; 59 U. S. App. 69] 31: 321

Enjoining collection of assessment on full value, where other property assessed for part only.

[67 Fed. 411; 32 U. S. App. 224] 14: 456

Enjoining overassessment of rolling stock employed in interstate commerce.

[60 Fed. 37; 23 U. S. App. 180] 8: 490

**XIV. CONSTRUCTION GENERALLY.**

Location of Line, see PUBLIC LANDS.

Construction and use of, on public highway, a nuisance. [94 Fed. 618] 30: 423

Necessity of city's consent to wider gauge.

[76 Fed. 670; 40 U. S. App. 464] 22: 470

Right of abutting owner to enjoin construction of switch.

[84 Fed. 46; 53 U. S. App. 673] 28: 274

Injunction against constructing embankment on own land.

[92 Fed. 721] 34: 625

Railroad embankment built so as to act as levee a public improvement.

[87 Fed. 594; 58 U. S. App. 281] 31: 121

**XV. NEGLIGENCE IN OPERATION.****In general.**

Company's liability for personal injuries during receivership.

[67 Fed. 456; 31 U. S. App. 644] 14: 469

Malicious use of steam whistle by servants of other company in charge of engine.

[62 Fed. 730; 23 U. S. App. 506; 27 L. R. A. 179] 10: 479

Liability for operation of engine rented to another company.

[61 Fed. 605; 22 U. S. App. 220; 24 L. R. A. 693] 9: 666

Authority to enact ordinance requiring ringing of bell.

[50 Fed. 814; 2 U. S. App. 213] 1: 688

Negligence in management of road operated by two companies, jurisdiction, illegal combination.

[62 Fed. 367; 18 U. S. App. 569] 10: 485

**Speed.**

City ordinance limiting speed applies to injury between crossings.

[74 Fed. 460; 38 U. S. App. 659] 20: 593

**Injuries on or near track—In general.**

Whether company negligent in running trains, question for jury.

[91 Fed. 466; 63 U. S. App. 429] 33: 633

Whether warnings given, question for jury.

[86 Fed. 240; 58 U. S. App. 526] 30: 6

Negligence of hostler in charge of an engine in being asleep or intoxicated.

[69 Fed. 124; 29 U. S. App. 687] 16: 175

Running trains in excess of speed fixed by city ordinance.

[91 Fed. 466; 63 U. S. App. 429] 33: 633

Inability to stop after discovering person caught in cattle guard.

[76 Fed. 201; 46 U. S. App. 498] 22: 121

Engineer's duty to prevent injury on seeing that person not looking after own safety.

[86 Fed. 240; 58 U. S. App. 526] 30: 6

Person appearing upon track immediately before being struck.

[61 Fed. 605; 22 U. S. App. 220; 24 L. R. A. 693] 9: 666

No recovery for death of licensee unless caused wilfully or by gross negligence.

[64 Fed. 823; 24 U. S. App. 489] 12: 618

**RAILROADS—continued.**

- Care due to person on platform to deliver article to person on train.  
[88 Fed. 199; 60 U. S. App. 32] 31: 454
- Injury to passenger while crossing track after alighting.  
[73 Fed. 627; 43 U. S. App. 129] 19: 616
- Care required where many persons accustomed to walk on track.  
[94 Fed. 321] 36: 361
- Care required at place where persons frequently standing.  
[91 Fed. 466; 63 U. S. App. 429] 33: 633
- By escaping car after running three fourths of a mile, proximate cause.  
[84 Fed. 596; 52 U. S. App. 433] 28: 494
- Admissibility of evidence that railroad track unfenced.  
[69 Fed. 808; 32 U. S. App. 577; 29 L. R. A. 695] 16: 435
- Sufficiency of instruction as to company's duty to avoid consequences of contributory negligence.  
[51 Fed. 935; 2 U. S. App. 272] 2: 549
- Allowing crippled steer to roam around railroad yards.  
[71 Fed. 939; 30 U. S. App. 541] 18: 394

**—Duty as to trespassers.**

- No duty until persons discovered on or dangerously near track, and reasonable grounds for belief that injury will result.  
[99 Fed. 369] 39: 568
- Only duty not to wantonly or unnecessarily inflict injury after discovery.  
[69 Fed. 525; 32 U. S. App. 621] 16: 300
- Liable only for failure to use ordinary care to avoid injury after discovery.  
[74 Fed. 403; 42 U. S. App. 1] 20: 476
- Duty as to stopping train on seeing person on track.  
[94 Fed. 303] 36: 353
- Same duty towards infant trespasser as adult.  
[74 Fed. 350; 43 U. S. App. 278] 20: 436
- Liability for running over trespasser asleep on track.  
[93 Fed. 745] 35: 571
- Question for jury as to negligence in not stopping train when child on track.  
[88 Fed. 116; 60 U. S. App. 156] 31: 414
- Care in stopping train on discovering child on track, question for jury.  
[94 Fed. 303] 36: 353
- Engineer not required to wreck engine on bare possibility of preventing injury to child on track.  
Id.
- Duty as to keeping lookout for trespassers.  
[69 Fed. 525; 32 U. S. App. 621] 16: 300  
[76 Fed. 201; 46 U. S. App. 498] 22: 121  
[92 Fed. 470] 34: 470
- Duty to have lookout on second section of train making flying switch.  
[53 Fed. 464; 10 U. S. App. 546] 3: 594
- Instruction on subject of trespassers, when not misleading.  
Id.

**—Who are trespassers or licensees.**

- Continued use by strangers of track for own purpose gives no implied license to use.  
[69 Fed. 525; 32 U. S. App. 621] 16: 300
- Track laid on ground previously constituting a public street.  
[83 Fed. 652; 49 U. S. App. 700] 27: 663
- Employee of lumber company on spur track not a trespasser.  
[79 Fed. 257; 49 U. S. App. 101] 24: 559
- One walking, for his own convenience, without invitation, along railroad tracks.  
[64 Fed. 823; 24 U. S. App. 489] 12: 618
- One crossing railroad yard to public ferry boat, after being ordered off of railroad ferry boat.  
[66 Fed. 115; 31 U. S. App. 277; 28 L. R. A. 181] 13: 364
- Person having business with company having contract for joint use of track with company inflicting injury.  
[91 Fed. 466; 63 U. S. App. 429] 33: 633
- When question whether children trespassers one of fact; effect of custom to use track.  
[84 Fed. 596; 52 U. S. App. 433] 28: 494

**RAILROADS—continued.****—Contributory negligence.**

- Failure to see train visible if looked for.  
[86 Fed. 292; 52 U. S. App. 708; 40 L. R. A. 746] 30: 58
- Of implied license, effect of. [57 Fed. 921; 12 U. S. App. 601] 6: 641
- Licensee unnecessarily walking on or near track.  
[59 Fed. 968; 8 U. S. App. 491] 8: 416
- Licensee walking on track in railroad yard, without looking behind him.  
[66 Fed. 115; 31 U. S. App. 277; 28 L. R. A. 181] 13: 364
- Standing or walking on track so near as to be in way of passing train.  
[83 Fed. 124; 55 U. S. App. 51] 27: 418
- Boy eight years old walking along track in dangerous position, without using ordinary prudence to learn of approaching train.  
[64 Fed. 830; 24 U. S. App. 504] 12: 625
- Servant walking on track without looking back.  
[74 Fed. 279; 46 U. S. App. 41] 20: 52
- Driving along highway parallel with and near railroad track, without looking for train. [69 Fed. 808; 32 U. S. App. 577; 29 L. R. A. 695] 16: 435
- Person running to get on train. [74 Fed. 296; 40 U. S. App. 23] 20: 196
- Instruction as to contributory negligence of person running on track. Id.
- Negligence of nine-year-old boy jumping on moving train.  
[74 Fed. 350; 43 U. S. App. 278] 20: 436
- Going on railroad track to inspect cars on spur track.  
[83 Fed. 652; 49 U. S. App. 700] 27: 663
- Right to rely on company running trains so as not to injure persons congregated at yard office. [91 Fed. 466; 63 U. S. App. 429] 33: 633
- Placing tramway across spur track to transfer lumber, without notifying the company or placing lookout for trains.  
[69 Fed. 525; 32 U. S. App. 621] 16: 300
- Intoxication of person on railroad track.  
[69 Fed. 124; 29 U. S. App. 687] 16: 175
- Gross negligence of railroad employees held to be the sole cause of accident, no question of contributory negligence.  
[79 Fed. 257; 49 U. S. App. 101] 24: 559
- Ordinance held not to deprive public of use of grounds on which track laid.  
[83 Fed. 652; 49 U. S. App. 700] 27: 663
- Burden as to contributory negligence on part of deceased. Id.

**Injuries at crossing—In general.**

- Right to stand cars on crossing, question for jury.  
[59 Fed. 237; 19 U. S. App. 291; 23 L. R. A. 654] 8: 109
- Company's negligence in failing to take precautions to avoid injury.  
[91 Fed. 860; 63 U. S. App. 758] 34: 114
- Failure to avoid injury to one observed by railroad employees approaching crossing.  
[72 Fed. 152; 30 U. S. App. 698] 18: 496
- Sufficiency of allegation of negligent injury.  
[74 Fed. 285; 46 U. S. App. 85] 20: 184
- Declaration for injury at crossing construed to be in case, not trespass.  
[73 Fed. 76; 38 U. S. App. 573] 20: 447
- Admissibility under pleading of evidence, that railroad employees saw plaintiff in time to avoid injury. [72 Fed. 152; 30 U. S. App. 698] 18: 496
- Admissibility of evidence as to narrow escapes of other persons at crossing where plaintiff injured. [67 Fed. 665; 32 U. S. App. 168, 406] 14: 615
- Evidence admissible as to distance from which crossing visible on train.  
[88 Fed. 116; 60 U. S. App. 156] 31: 414
- Instruction as to company's superior rights at crossings misleading.  
[67 Fed. 71; 30 U. S. App. 183] 14: 310

## RAILROADS—continued.

**Duty as to warnings, generally.**

- Duty to give warning, failure of overseers to erect sign.  
[81 Fed. 791; 54 U. S. App. 129] 26: 615
- Extent of warning required at grade crossing.  
[67 Fed. 665; 32 U. S. App. 168, 406] 14: 615
- Sufficiency of sign indicating crossing to put engineer on notice.  
[61 Fed. 592; 22 U. S. App. 187] 9: 646

**—Duty as to signals.**

- Duty of company as to bell on engine.  
[86 Fed. 230; 56 U. S. App. 593] 29: 674
- Time and place of crossing signals. [84 Fed. 93; 54 U. S. App. 550] 29: 81
- Duty to give warning signals at crossing, see Note, 29: 90
- Duty to keep bell ringing or whistle blowing until crossing reached.  
[72 Fed. 152; 30 U. S. App. 698] 18: 496
- Sounding whistle at greater distance than prescribed.  
[56 Fed. 799; 13 U. S. App. 532] 6: 138
- Duty as to warning signal at private crossing.  
[69 Fed. 808; 32 U. S. App. 577; 29 L. R. A. 695] 16: 435
- To whom duty to give warning signal owed. Id.
- Mere compliance with statutory requirements as to audible signals not necessarily sufficient. [99 Fed. 529] 39: 642
- Backing train over city crossing at night, without signal.  
[63 Fed. 532; 27 U. S. App. 334] 11: 337
- Whether ringing bell when pushing cars over, on dark night, sufficient, question for jury. [91 Fed. 800; 63 U. S. App. 758] 34: 114
- Affirmative and negative testimony as to giving signals.  
[54 Fed. 301; 56 U. S. App. 381] 4: 343
- When question as to giving crossing signal, for jury.  
[84 Fed. 93; 54 U. S. App. 550] 29: 81
- Necessity of showing that town incorporated, where failure to give signals relied on. [92 Fed. 470] 34: 470

**—Duty as to flagmen or gates.**

- Ordinance requiring flagman at crossing, death of switchman.  
[60 Fed. 999; 22 U. S. App. 94] 9: 321
- Negligence of company in failing to maintain flagman or gates.  
[92 Fed. 310] 34: 1

**—At other than public crossings.**

- Presumption, from long use, of right to cross track.  
[74 Fed. 350; 43 U. S. App. 278] 20: 436
- Care required from engineer at footpath crossing.  
[63 Fed. 396; 27 U. S. App. 358] 11: 552
- Company's duty at place where large number cross tracks daily.  
[74 Fed. 285; 46 U. S. App. 85] 20: 184
- What constitutes implied license to cross track.  
[74 Fed. 350; 43 U. S. App. 278] 20: 436
- Duty as to warning signal at.  
[69 Fed. 808; 32 U. S. App. 577; 29 L. R. A. 695] 16: 435  
See also Note, 29: 97
- Use of alleged crossing justifying presence on track of person injured.  
[74 Fed. 285; 46 U. S. App. 85] 20: 184
- Company's duty to anticipate presence of person at place much used for crossing. Id.  
[74 Fed. 350; 43 U. S. App. 278] 20: 436
- Sufficient averment of existence of path over tracks publicly used.  
[74 Fed. 285; 46 U. S. App. 85] 20: 184
- Averment that road was a "public" one, proving without amendment that it was a private one. [81 Fed. 791; 54 U. S. App. 129] 26: 615

**RAILROADS—continued.****—Proximate cause of injury.**

- Failure to give signals at crossing as proximate cause of injury, see Note, 29: 96  
 Train obstructing crossing, horse shying.  
     [59 Fed. 237; 19 U. S. App. 291; 23 L. R. A. 654] 8: 109  
 Person catching foot in hole, and being struck by train.  
     [85 Fed. 413; 56 U. S. App. 137] 29: 235  
 Defect in gate, or catching foot in track.  
     [75 Fed. 811; 43 U. S. App. 673] 22: 415

**—Contributory negligence, generally.**

- When recovery may be had notwithstanding.  
     [85 Fed. 413; 56 U. S. App. 137] 29: 235  
 Care required from person about to cross track.  
     [67 Fed. 71; 30 U. S. App. 183] 14: 310  
 Relative care of traveler and railroad company, instruction.  
     [59 Fed. 860; 19 U. S. App. 346] 8: 322  
 Right to use tracks as means of crossing street.  
     [85 Fed. 413; 56 U. S. App. 137] 29: 235  
 At crossing where view of approaching train obstructed.  
     [64 Fed. 211; 24 U. S. App. 536] 12: 97  
 Question for jury where accident happens during storm at night, though train visible in daytime.  
     [99 Fed. 529] 39: 642  
 Deaf man approaching crossing with view obstructed, without precaution.  
     [73 Fed. 76; 38 U. S. App. 573] 20: 447  
 Running in front of train concealed by another train on intervening track.  
     [76 Fed. 101; 46 U. S. App. 150] 22: 75  
 Crossing behind standing train by invitation, question for jury.  
     [59 Fed. 237; 19 U. S. App. 291; 23 L. R. A. 654] 8: 109  
 Driving on double track immediately behind train passing on nearest track.  
     [98 Fed. 520] 39: 145  
 Driver caught between two sections, invitation to cross.  
     [49 Fed. 814; 4 U. S. App. 259] 1: 448  
 Failure of deaf man to see train in plain sight.  
     [82 Fed. 217; 49 U. S. App. 476] 27: 112  
 Attempting to cross railroad bridge after looking for train.  
     [93 Fed. 384] 35: 357  
 Attempting to cross track before train perceived when practically on track.  
     [67 Fed. 665; 32 U. S. App. 168, 406] 14: 615  
 Boy fourteen years old crossing diagonally near station while attracted by live engine on sidetrack.  
     [94 Fed. 294] 37: 359  
 Failing to hear train heard by other persons.  
     [67 Fed. 665; 32 U. S. App. 168, 406] 14: 615  
 Question for jury when dependent on question whether place of injury a public crossing.  
     [91 Fed. 860; 63 U. S. App. 758] 34: 114  
 Evidence making question for jury. [55 Fed. 940; 12 U. S. App. 254] 5: 338  
 When instruction that plaintiff guilty of contributory negligence not justified.  
     [67 Fed. 277; 35 U. S. App. 208] 14: 394  
 Refusal of requested instruction as to presumption from deceased's behavior.  
     [84 Fed. 93; 54 U. S. App. 550] 29: 81

**—Contributory, when statutory signals not given.**

- Contributory negligence where signals not given, see Note, 29: 104  
 Effect of, when company omits statutory precautions.  
     [54 Fed. 301; 6 U. S. App. 281] 4: 346  
     [61 Fed. 592; 22 U. S. App. 187] 9: 646  
     [61 Fed. 605; 22 U. S. App. 220; 24 L. R. A. 693] 9: 666  
 Right to rely on company's giving statutory signals at crossings.  
     [72 Fed. 152; 30 U. S. App. 698] 18: 496

**RAILROADS—continued.**

- Contradiction as to care exercised; no bell rung or whistle blown.  
[59 Fed. 860; 19 U. S. App. 346] 8: 322
- Failure to look behind, failure to ring bell as required by ordinance.  
[57 Fed. 921; 12 U. S. App. 601] 6: 641
- Failure to anticipate backing flat cars over crossing without signal.  
[63 Fed. 532; 27 U. S. App. 334] 11: 337
- Failure to look and listen when gates not lowered.  
[61 Fed. 375; 22 U. S. App. 129] 9: 526
- Effect of failure to lower bars or to have flagman present.  
[76 Fed. 101; 46 U. S. App. 150] 22: 75
- Of employee in attempting to cross track with bucket of mortar at place where track obstructed.  
[100 Fed. 731] 40: 673

**—Failure to look and listen.**

- Right to instruction as to duty to look and listen.  
[78 Fed. 784; 51 U. S. App. 15] 24: 342
- Presumption that decedent stopped, looked, and listened.  
[84 Fed. 93; 54 U. S. App. 550] 29: 81
- Inference as to, from failure of witnesses to see one stop or turn his head to look or listen.  
[83 Fed. 82; 48 U. S. App. 757] 27: 457
- Failure to stop, look, and listen.  
[50 Fed. 814; 2 U. S. App. 213] 1: 688
- Evidence that people in wagon with plaintiff made no outcry. Id.
- Duty to stop, look, and listen before crossing.  
[67 Fed. 71; 30 U. S. App. 183] 14: 310
- Duty to look both ways, and listen, before crossing.  
[79 Fed. 744; 49 U. S. App. 260] 25: 190
- Duty of driver's guest to look and listen, question for jury. Id.
- Failure to look or listen for rapid train known to be due.  
[67 Fed. 591; 28 U. S. App. 405] 14: 555
- Failure to stop, look or listen, knowledge that train about due.  
[54 Fed. 301; 6 U. S. App. 381] 4: 346
- Failure to look in direction from which train approached, for entire minute before driving on track.  
[79 Fed. 744; 49 U. S. App. 260] 25: 190
- Failing to look for train until within 36 feet of track.  
[69 Fed. 86; 29 U. S. App. 664] 16: 151
- Duty to stop, look, and listen at point where stopping involved danger.  
[84 Fed. 93; 54 U. S. App. 550] 29: 81
- Driving on track without looking immediately after other train passed.  
[66 Fed. 502; 31 U. S. App. 366] 13: 608
- Failure to stop to look and listen before driving on track, where view obstructed.  
[66 Fed. 496; 31 U. S. App. 306] 13: 602
- Driving on track without again looking, after seeing approaching train when 135 feet away.  
[97 Fed. 747] 38: 408
- Failure to look and listen when gates not lowered.  
[61 Fed. 375; 22 U. S. App. 129] 9: 526
- Failure of ten-year-old boy to look and listen before attempting to cross track.  
[95 Fed. 370] 37: 106
- When failure to stop and listen between starting point and crossing, question for jury.  
[77 Fed. 810; 40 U. S. App. 739] 23: 475

**Injuries to animals—In general.**

- Stock in Indian territory in violation of law.  
[49 Fed. 347; 4 U. S. App. 121] 1: 236
- Duty in Indian territory as to stock on track. Id.
- [49 Fed. 356; 4 U. S. App. 136] 1: 295
- [49 Fed. 358; 4 U. S. App. 200] 1: 297
- [54 Fed. 474; 10 U. S. App. 629] 4: 447
- [54 Fed. 481; 10 U. S. App. 640] 4: 454
- [54 Fed. 485; 10 U. S. App. 647] 4: 458
- [54 Fed. 485; 10 U. S. App. 650] 4: 459
- [54 Fed. 486; 12 U. S. App. 170] 4: 460

**RAILROADS—continued.**

Sufficiency of complaint in action for.

[49 Fed. 347; 4 U. S. App. 121] 1: 286

Presumption of negligence from fact of killing or injuring.

[49 Fed. 798; 4 U. S. App. 243] 1: 432

[49 Fed. 800; 4 U. S. App. 246] 1: 435

Inference of negligence, failure to blow whistle on discovering stock.

[58 Fed. 151; 12 U. S. App. 697] 7: 129

Burden to show special circumstances preventing stopping of train.

[54 Fed. 481; 10 U. S. App. 640] 4: 454

[54 Fed. 485; 10 U. S. App. 647] 4: 458

[54 Fed. 485; 10 U. S. App. 650] 4: 459

[54 Fed. 486; 12 U. S. App. 170] 4: 460

Failure to produce engineer as witness.

Id.

Circumstantial evidence as to killing.

[49 Fed. 347; 4 U. S. App. 121] 1: 286

Evidence as to distance at which cattle can be seen on track.

Id.

*Res gestæ*, section foreman's statement.

[62 Fed. 116; 27 U. S. App. 71] 10: 300

Sufficiency of, to establish negligence in killing mare on track.

[54 Fed. 481; 10 U. S. App. 640] 4: 454

[54 Fed. 485; 10 U. S. App. 647] 4: 458

[54 Fed. 485; 10 U. S. App. 650] 4: 459

[54 Fed. 486; 12 U. S. App. 170] 4: 460

When instruction, that company bound to use "utmost" care, harmless.

[49 Fed. 440; 4 U. S. App. 283] 1: 311

Contributory negligence, turning horses loose near track.

[58 Fed. 151; 12 U. S. App. 697] 7: 129

**—Lack of fence.**

Effect of contract to fence tracks. [49 Fed. 347; 4 U. S. App. 121] 1: 286

Necessity of averring contract to fence tracks.

Id.

Duty to charge that there is no statute requiring companies to fence.

[49 Fed. 356; 4 U. S. App. 136] 1: 295

**Frightening animals.**

Ordinance against blowing whistle, instruction as to.

[53 Fed. 219; 10 U. S. App. 473] 3: 506

Wrongfully running train on public landing proximate cause of death from team taking fright.

[94 Fed. 618] 36: 423

Contractual, as well as police provisions, in ordinance granting company right to construct road on public landing.

Id.

Imposing conditions on granting power to construct railroad on city streets.

Id.

Trespasser liable for damages proximately resulting by unauthorized use of highways.

Id.

**Accident to trains—In general.**

Head-end collision between trains at full speed.

[67 Fed. 219; 32 U. S. App. 111] 14: 377

Collision between switch engine of one company and extra train of another.

[57 Fed. 115; 12 U. S. App. 506] 6: 276

Failure to notify engineer of switch train, extra train late.

Id.

**—At crossing of two roads.**

Duty to stop, crossing of railway and horse-car line.

[61 Fed. 605; 22 U. S. App. 220; 24 L. R. A. 693] 9: 666

Failure of trolley-car company to take agreed precautions, effect as absolving railroad company.

[77 Fed. 126; 39 U. S. App. 451] 23: 77

Facts showing negligence.

[51 Fed. 649; 10 U. S. App. 209] 2: 437

Presumption as to negligence of one or both companies.

[49 Fed. 209; 4 U. S. App. 109] 1: 231



**RAILROADS—continued.**

Collision between trains at crossings, contributory negligence.

[60 Fed. 993; 22 U. S. App. 102] 9: 314

Duty of engineer to listen for other train.

[51 Fed. 178; 4 U. S. App. 563] 2: 153

Failure of train to stop absolutely at stopping post.

Id.

Negligence in driving engine into other train having right of way.

[68 Fed. 148; 32 U. S. App. 253] 15: 327

Lack of locomotive headlight on train having right of way at crossing.

Id.

Contributory negligence in proceeding with train having right of way, after other train stops.

Id.

Both companies liable if both negligent.

[49 Fed. 209; 4 U. S. App. 109] 1: 231

Right of one company to complain of verdict exonerating other.

[51 Fed. 649; 10 U. S. App. 209] 2: 437

**Fires—In general.**

Degree of care required on company's part.

[49 Fed. 807; 4 U. S. App. 247] 1: 441

Inference as to negligence from emission of sparks.

[83 Fed. 300; 49 U. S. App. 647] 27: 534

Overcoming presumption.

Id.

Presumption of negligence from starting of fire from engine.

[92 Fed. 494] 34: 497

Communication of fire, prima facie evidence of negligence.

[49 Fed. 807; 4 U. S. App. 247] 1: 441

Loss of crops on land held under contract with Indians.

[54 Fed. 474; 10 U. S. App. 629] 4: 447

Liability for loss of eye of passenger on station platform by sparks from passing engine.

[90 Fed. 709; 62 U. S. App. 429] 33: 251

Evidence as to combustible material at other points.

[51 Fed. 658; 7 U. S. App. 254] 2: 446

Instructions as to duty to keep right of way free from combustibles.

[52 Fed. 711; 10 U. S. App. 375] 3: 264

Allowing combustible material to accumulate on right of way.

[49 Fed. 807; 4 U. S. App. 247] 1: 441

Evidence of origin, fires set on previous occasions.

[52 Fed. 711; 10 U. S. App. 375] 3: 264

[54 Fed. 474; 10 U. S. App. 629] 4: 447

Finding that fire set by particular engine.

Id.

Whether fire communicated by locomotive, question for jury on conflicting evidence.

[80 Fed. 993; 46 U. S. App. 701] 26: 296

Admissibility of evidence to prove prima facie ownership in destroyed property.

[52 Fed. 711; 10 U. S. App. 375] 3: 264

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[51 Fed. 658; 7 U. S. App. 254] 2: 446

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[49 Fed. 807; 4 U. S. App. 247] 1: 441

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Id.

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Refusal of requested instruction that no effort made to protect hay.

[49 Fed. 807; 4 U. S. App. 247] 1: 441

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[54 Fed. 474; 10 U. S. App. 629] 4: 447

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[51 Fed. 658; 7 U. S. App. 254] 2: 446

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[59 Fed. 192; 20 U. S. App. 136] 8: 86

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[60 Fed. 105; 15 U. S. App. 205] 8: 505

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[78 Fed. 536; 47 U. S. App. 676] 24: 198

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[67 Fed. 219; 32 U. S. App. 111] 14: 377

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[61 Fed. 225; 22 U. S. App. 154] 9: 457

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Id.

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[77 Fed. 713; 40 U. S. App. 591] 23: 420

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[97 Fed. 239] 38: 143

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## RECEIVERS—continued.

- Preferred stockholders of corporation not entitled to, unless insolvent. *Id.*  
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- Effect of.**  
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- Issuance of tax deed to purchaser not enjoined because property in possession of.  
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[89 Fed. 131; 59 U. S. App. 499] 32: 173
- Appointment of, not prevent rescission of sale by bank.  
[52 Fed. 77; 2 U. S. App. 434] 2: 629  
[60 Fed. 17; 13 U. S. App. 649] 8: 444
- Not affect priority of liens or existing rights.  
[90 Fed. 454; 62 U. S. App. 195] 33: 598
- Does not affect right to equitable set-off against insolvent corporation. Id.
- In foreclosure of railroad first mortgage in suit by trustee, not prevent latter from selling second mortgage bonds as pledgee.  
[87 Fed. 813; 58 U. S. App. 213] 31: 235
- Decree appointing, as call on subscription.  
[51 Fed. 381; 4 U. S. App. 438] 2: 286

**Title to, and possession of, property.**

- Receiver merely court's custodian. [90 Fed. 454; 62 U. S. App. 195] 33: 598
- Receiver's constructive possession of property actually possessed by adverse claimant.  
[93 Fed. 286] 35: 302
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[68 Fed. 515; 30 U. S. App. 358] 15: 556
- Of state court, effect of possession of property on prior action in Federal court.  
[72 Fed. 115; 30 U. S. App. 580] 18: 451
- Auxiliary jurisdiction to foreclose mortgage where receiver in possession of railroad property.  
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- Enjoining interference with possession or disposition of property. Id.
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[80 Fed. 441; 42 U. S. App. 417] 25: 540
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[92 Fed. 435] 34: 438
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- Of insolvent bank, not entitled to proceeds of checks indorsed by city treasurer "for deposit." [50 Fed. 647; 5 U. S. App. 14; 17 L. R. A. 291] 1: 598
- State court no power to issue process against property in hands of Federal receiver. [76 Fed. 296; 47 U. S. App. 36] 22: 334
- Proper procedure to compel receivers to return property to persons not parties to suit. [67 Fed. 45; 28 U. S. App. 353] 14: 300
- Judgment creditor's right to have land not within railroad mortgage discharged from receiver's custody. [69 Fed. 17; 32 U. S. App. 468] 16: 358
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- Duty to return unburned ore to sellers of same to corporation. [67 Fed. 45; 28 U. S. App. 353] 14: 300

**Liability—In general.**

- Duty of receiver of railroad lessee to avoid injury to train of lessor. [97 Fed. 239] 38: 143
- Of railroad, liability to penalty for failure to unload stock. [85 Fed. 533; 57 U. S. App. 259] 29: 327
- Of railroads, applicability to, of statutes relating to liability of company for injuries to employees. [78 Fed. 693; 47 U. S. App. 339] 24: 280
- Liability for personal injuries during railroad receivership. [67 Fed. 456; 31 U. S. App. 644] 14: 469
- Of railroad company, liability for death by wrongful act. [60 Fed. 176; 23 U. S. App. 167] 8: 544  
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- Liability of receiver of entire railroad system for converting third person's property for use of particular line, not removed by appointing other receiver for such line. [91 Fed. 209; 63 U. S. App. 389] 33: 453
- Of insolvent bank, liability to pay tax on stockholder's shares. [91 Fed. 93; 62 U. S. App. 638] 33: 353
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- For receivership debts on selling property without leave of court for small sum in addition to existing lien. [98 Fed. 499] 39: 132
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**—On pre-existing contracts.**

- Ratification by Federal receiver of contract by prior state receiver to operate railroad. [93 Fed. 543] 35: 423
- Executory contracts not binding on until adopted. [74 Fed. 664; 41 U. S. App. 165] 20: 674
- Contract of employment by railroad company not binding on receiver subsequently appointed. [92 Fed. 545] 34: 523
- In railroad foreclosure, liability on contract for construction. [51 Fed. 332; 4 U. S. App. 631] 2: 245
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- Adoption of lease of part of railroad line, what constitutes. [86 Fed. 517; 58 U. S. App. 604] 30: 235
- Covenants of lease, adoption, condition precedent of. [77 Fed. 700; 46 U. S. App. 578] 23: 415
- Power to assume or renounce leases of branch roads. [81 Fed. 254; 49 U. S. App. 462] 26: 383
- Adoption of railroad lease by lessee's receivers. [88 Fed. 140; 59 U. S. App. 330] 31: 427

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- Adoption by railroad receiver of lease for use of depot, what constitutes. [74 Fed. 88; 43 U. S. App. 300] 20: 282
- Car trust lease, compensation for use of rolling stock. [84 Fed. 535; 55 U. S. App. 452] 28: 488
- Liability of company to which operation of road and rolling stock turned over by receiver. Id.
- Of railroads, car trust lease, adoption of, reasonable time to determine. Id.

**Contracts by.**

- Railroad receiver power to make any contract company could make. [93 Fed. 543] 35: 423
- Railroad receiver's contract with connecting company, one for operation of road as receiver's agent. Id.
- Agreement by receiver that lessee of railroad not liable for accidents, not *ultra vires*. Id.
- Agreement by, to hold lessee of railroad free from liability for injury, valid. Id.

**Sale by.**

- Advertisement of judicial sale by. [52 Fed. 74; 2 U. S. App. 403] 2: 626
- Directing sale under mortgage subject to outstanding obligations. [58 Fed. 473; 8 U. S. App. 461] 7: 322
- Receiver's breach of unknown condition, not release surety on note for purchase price of property sold by receiver. [92 Fed. 838] 35: 38
- Receiver's failure to perform duty, not relieve surety on note for price of property purchased from receiver. Id.
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**Payment of claims—In general.**

- Holder of tax certificate not required to file claim with receiver, on redemption by latter from tax sale. [97 Fed. 719] 38: 388
- No distinction between foreign and domestic creditors in Federal court. [88 Fed. 130; 59 U. S. App. 610] 31: 424
- Liability of railroad company for claims against receiver. [60 Fed. 979; 23 U. S. App. 143] 9: 300
- In mortgage foreclosure, bill by lien claimant ancillary. [57 Fed. 753; 16 U. S. App. 115] 6: 539
- Petition for payment of claim, necessity of alleging funds. [77 Fed. 700; 46 U. S. App. 578] 23: 415
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- Of national bank, right of judgment creditor to resort to equity to compel allowance of claim. [79 Fed. 189; 48 U. S. App. 235] 24: 476
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- Compensation of master to examine and pass on railroad receiver's accounts. [93 Fed. 60] 35: 202
- Fees of attorney for plaintiff in protecting fund against unfounded claims, though services rendered after receiver's appointment. [87 Fed. 810; 58 U. S. App. 166] 31: 233
- Of attachment creditor, by receiver in suit to foreclose railroad mortgage. [73 Fed. 568; 43 U. S. App. 224] 19: 569
- Of railroads, authorizing payment of current pay rolls. [75 Fed. 54; 33 U. S. App. 491] 21: 219
- Of supply accounts incurred prior to appointment. Id.
- Allowing claim for negligent injury in matter of railroad receivership, though road sold. [97 Fed. 239] 38: 143

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- Approval of claim for supplies by acceptance of draft.  
[76 Fed. 504; 42 U. S. App. 167] 22: 300
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[74 Fed. 395; 46 U. S. App. 115; 33 L. R. A. 739] 20: 468
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[65 Fed. 573; 31 U. S. App. 75; 28 L. R. A. 231] 13: 47
- Right to object to payments made by receivers.  
[91 Fed. 5; 62 U. S. App. 1] 33: 299
- Right of purchaser of railroad, agreeing to pay claims as part of purchase price, to be subrogated to rights of holders of such claims.  
[90 Fed. 666; 62 U. S. App. 276] 33: 213
- Railroad property liable in purchaser's hands for claim for personal injuries during receivership.  
[93 Fed. 349] 35: 335
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[61 Fed. 491; 17 U. S. App. 502] 9: 582
- Right to interpose counterclaim for delay in delivering machinery against judgment for purchase price.  
[81 Fed. 269; 49 U. S. App. 453] 26: 397
- Directing return of advances made under permission of court to receiver pending receivership.  
[99 Fed. 495] 39: 615

**—Time of presenting claim.**

- Laches in reducing to judgment and filing.  
[83 Fed. 365; 48 U. S. App. 668] 27: 550
- Of railroad, delay in paying claim for supplies furnished before receivership.  
[75 Fed. 54; 33 U. S. App. 491] 21: 219
- Delay of claimants in presenting claim. Id.
- Failure to present claim within time required by order of discharge.  
[60 Fed. 979; 23 U. S. App. 143] 9: 300

**—From what fund payable.**

- Expenses and deficits incurred in operation of leased roads, to which road chargeable.  
[81 Fed. 254; 49 U. S. App. 462] 26: 383
- Holders of city warrants for drainage works not restricted for payment to funds in hands of receiver of drainage fund.  
[87 Fed. 843; 58 U. S. App. 109] 31: 249
- Application of rents of mortgaged property to taxes, insurance, and repairs.  
[89 Fed. 610; 60 U. S. App. 693] 32: 275
- Directing payment of vendor's lien from earnings of railroad.  
[90 Fed. 189; 61 U. S. App. 531] 32: 571
- Damages occurring while railroad in hands of receivers as part of operating expenses, payable from income if any, otherwise from corpus.  
[86 Fed. 1; 52 U. S. App. 720] 29: 523
- Out of corpus, if necessary, for coal furnished and used by railroad company.  
[66 Fed. 803; 30 U. S. App. 263] 14: 112
- Receivership expenses and debts for labor and supplies, payable out of corpus of estate.  
[94 Fed. 901] 36: 541

**—Receivership certificates.**

See also *infra*, **Priority of claims.**

- Nature of certificates, see Note, 26: 350
- Notice of proceedings prior and subsequent, duty to advise court of claim.  
[58 Fed. 6; 16 U. S. App. 37] 7: 3
- Issue of, to pay taxes. [70 Fed. 2; 36 U. S. App. 61; 30 L. R. A. 201] 16: 586
- To add to private corporation's property without consent of creditors whose liens affected.  
[90 Fed. 142; 61 U. S. App. 636] 32: 542
- Sale of telegraph wires to pay, respective rights of purchaser and contractor for erection of wires.  
[80 Fed. 961; 53 U. S. App. 319] 26: 342
- Ratification by receiver of bank's sale of certificates.  
[57 Fed. 25; 13 U. S. App. 506] 6: 242

**RECEIVERS—continued.**

- Crediting proceeds to receiver, checking against. Id.
- Demanding and receiving collateral security from bank. Id.
- Effect of inability of bank to pay over deposits. Id.
- Transfer of lien from property to proceeds of sale. [58 Fed. 6; 16 U. S. App. 37] 7: 3
- Estoppel of receiver to repudiate, enforcing, against purchaser of property. [57 Fed. 25; 13 U. S. App. 506] 6: 242
- Laches in seeking payment against purchasers or distributees of property. [58 Fed. 6; 16 U. S. App. 37] 7: 3
- Effect of sale to satisfy contested certificates on lien of uncontested certificates. [77 Fed. 787; 41 U. S. App. 766] 23: 459
- Effect of agreement between holders of uncontested and contested certificates. Id.
- For balance due from railroad before appointment, payment out of proceeds of foreclosure. [62 Fed. 205; 8 U. S. App. 547] 10: 323
- Receiver's certificates not invalid because bill for receiver's appointment demurrable. [96 Fed. 636] 37: 528

**—Payment of interest on.**

- Allowing interest on claim against railroad receiver for negligent injury, from date of filing decision on which decree entered. [97 Fed. 239] 38: 143
- Interest on claim improperly disallowed by bank receiver. [94 Fed. 705] 36: 432
- Interest on dividends allowed as if no offer to allow claim made, where withdrawn. [65 Fed. 573; 31 U. S. App. 75; 28 L. R. A. 231] 13: 47
- Interest on claim against insolvent bank from date of judicial demand. [94 Fed. 442] 36: 307
- On claim for supplies furnished railroad prior to receivership. [75 Fed. 54; 23 U. S. App. 491] 21: 210
- Waiver of interest by accepting principal of claim for supplies. [76 Fed. 505; 42 U. S. App. 169] 22: 302
- Payment by, of interest and penalty necessary to redeem from tax sale. [97 Fed. 719] 38: 388

**Priority of claims—In general.**

- Of intervening creditor from fund, only when intervention shown to have resulted in benefit thereto. [100 Fed. 162] 40: 319
- Right of preference over railroad mortgage passing to assignee of debt. [69 Fed. 23; 32 U. S. App. 480] 16: 364
- Mortgagees on par, as to deficiency, with other general creditors. [86 Fed. 711; 52 U. S. App. 675] 30: 349
- Of general creditors, in whose suit receiver appointed over "debts of the income." [91 Fed. 5; 62 U. S. App. 1] 33: 299
- Of advances made and bonds loaned to pay floating debts and interest coupons. [79 Fed. 212; 52 U. S. App. 111] 24: 497
- No preferential lien on railroad lessor's property for rails sold to individual for lessee. [91 Fed. 5; 62 U. S. App. 1] 33: 299
- Fees for attorney in stockholder's suit prior to mortgage to foreclose which other suit brought. [93 Fed. 60] 35: 202
- Of railroad, mileage for use of palace cars. [84 Fed. 18; 55 U. S. App. 170] 28: 263
- Taxes paid by lessor of railroad, over mortgage debt. [88 Fed. 140; 59 U. S. App. 330] 31: 427
- Taxes paid by purchaser of railroad out of earnings during receivership. [96 Fed. 907] 37: 615
- Trust fund in bank. [88 Fed. 375; 60 U. S. App. 372] 31: 562
- For price of cable, over mortgage bonds. [83 Fed. 365; 48 U. S. App. 668] 27: 550
- Necessity of showing diversion. Id.
- Lapse of two years between time cable furnished and receiver appointed. Id.



**RECEIVERS—continued.**

Purchase price of machinery furnished within six months before appointment.  
[81 Fed. 269; 49 U. S. App. 453] 26: 397

Between interest payments on first mortgage bonds by purchaser under foreclosure of second mortgage, and second mortgage bondholders.  
[96 Fed. 907] 37: 615

Adjudging claims against receiver in stockholder's suit first lien on railroad property, after transferring to receiver in bondholder's suit.  
[93 Fed. 60] 35: 202

**—Personal injuries.**

Of claim against street railway company for personal injuries, over mortgage debt.  
[70 Fed. 32; 36 U. S. App. 100; 30 L. R. A. 456] 16: 610

Damages for personal injuries preferred to prior mortgage on railroad, when.  
[71 Fed. 776; 30 U. S. App. 653] 18: 321  
[73 Fed. 112; 41 U. S. App. 33] 19: 385

Preference of claim for tort before appointment of receiver, over mortgage.  
[79 Fed. 471; 49 U. S. App. 191] 25: 39

Provision of mortgage authorizing diversion of income. Id.

**—Rentals.**

Unpaid rent for railroad, first lien on property.  
[86 Fed. 517; 58 U. S. App. 604] 30: 235

Rent of railroad track privileges, over mortgage.  
[87 Fed. 500; 59 U. S. App. 694] 31: 89

For car rentals before receivership, not preferred over mortgage.  
[76 Fed. 164; 46 U. S. App. 138] 22: 109

Rent not due when receivers appointed. Id.

Rent of railroad line payable as operating expense.  
[86 Fed. 517; 58 U. S. App. 604] 30: 235

Rent of railroad not subject to deduction for expenses of lessee's receiver in operating road.  
[95 Fed. 336] 37: 88

**—Operating expenses.**

Obligations entered into at railroad receiver's request to preserve the property.  
[73 Fed. 568; 43 U. S. App. 224] 19: 569

Between rentals and operating expenses. [95 Fed. 336] 37: 88

Rent of railroad payable as. [86 Fed. 517; 58 U. S. App. 604] 30: 235

Displacing lien of prior mortgage to pay operating expenses.  
[95 Fed. 850] 37: 396

Operating expenses incurred within reasonable period prior to appointment of receiver.  
[80 Fed. 624; 47 U. S. App. 663] 26: 30

Discretion as to determination of period, limitation of six months. Id.

Between receivership certificates and claims for current expenses.  
[75 Fed. 335; 41 U. S. App. 482] 21: 375

For railroad bridge constructed, over other claims for operating expenses.  
[95 Fed. 850] 37: 396

Preference of moneys expended and liabilities incurred by receivers in management of property.  
[81 Fed. 254; 49 U. S. App. 462] 26: 383

Priority as between mortgage bonds and notes made to keep road in safe running order and increase its value. [79 Fed. 210; 52 U. S. App. 107] 24: 495

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Coal furnished to railroad company and used in operating road.  
[66 Fed. 803; 30 U. S. App. 263] 14: 112

Judgment for supplies furnished, preferred to railroad mortgage.  
[69 Fed. 23; 32 U. S. App. 480] 16: 364

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- Mortgage bonds not prior to receivership expenses and debts for labor and supplies. [94 Fed. 901] 36: 541
- Furnished reasonable time before receivership, preference in. [76 Fed. 492; 42 U. S. App. 145] 22: 289
- Payment out of earnings. [76 Fed. 502; 42 U. S. App. 162] 22: 298
- Preference in proceeds of mortgage when earnings diverted. Id. [76 Fed. 504; 42 U. S. App. 167] 22: 300
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- Of supplies, purchases of new rails sixteen months before receiver's appointment. [79 Fed. 202; 52 U. S. App. 91] 24: 487
- Of railroads, claim for supplies furnished shortly before appointment, effect of claimant becoming party to proceedings. [75 Fed. 54; 33 U. S. App. 491] 21: 219
- Right to preference for supplies furnished, lost by taking note. [71 Fed. 916; 37 U. S. App. 523] 18: 386
- Claim for advertising matter furnished prior to appointment as debt for materials necessary to operation. [80 Fed. 624; 47 U. S. App. 603] 26: 30

**—Receiver's certificates.**

See also *supra*, **Payment of claims.**

- Court cannot make prior to lien creditors without their consent. [90 Fed. 142; 61 U. S. App. 636] 32: 542
- Compensation of receiver for services, entitled to priority over. [70 Fed. 643; 30 U. S. App. 504] 17: 310
- Priority of, over mortgage existing when property conveyed to railroad. [79 Fed. 196; 48 U. S. App. 273] 24: 482
- Displacing liens of mortgages on land by issuing certificates to continue business or carry out contracts with purchasers. [70 Fed. 2; 36 U. S. App. 61; 30 L. R. A. 201] 16: 586
- Order making receiver's certificates prior to mortgage lien, not binding where mortgage trustee not party. [96 Fed. 636] 37: 528
- Issued in suit by subsequent mortgagee, waiver by prior mortgagee of objections to priority. [75 Fed. 193; 41 U. S. App. 339] 21: 291
- Acquiescence in issuance. Id.
- Obtaining extension of receivership, etc. [75 Fed. 209; 41 U. S. App. 369] 21: 307
- Committee appointed by bondholders no authority to consent that receiver's certificates shall constitute lien prior to mortgage. [96 Fed. 636] 37: 528
- Between trustees in railroad mortgage and receiver's certificates. [70 Fed. 643; 30 U. S. App. 504] 17: 310
- Between solicitors in foreclosure of railroad mortgage and receiver's certificates. Id.
- When holders of certificates concluded as to priority of claims for current expenses. [75 Fed. 335; 41 U. S. App. 482] 21: 375
- Right to restrain enforcement of decree to enforce lien of, adjudged prior. [62 Fed. 686; 23 U. S. App. 660] 10: 587

**—Judgments.**

- Respective rights of bondholders and judgment creditors to surplus income in hands of receiver. [79 Fed. 471; 49 U. S. App. 191] 25: 39
- Judgments against railroad lessor over bondholders, in earnings in hands of lessee's receiver. [86 Fed. 398; 57 U. S. App. 136] 30: 133
- As between mortgagee and judgment creditors, to surplus earnings accumulated in hands of receiver. [84 Fed. 274; 55 U. S. App. 191] 28: 384
- Necessity of negating disbursement of earnings applicable to judgment. Id.
- No equitable lien acquired by obtaining judgment after receiver appointed. [86 Fed. 711; 52 U. S. App. 675] 30: 349
- Prosecution of claim to judgment as waiver of preference. [81 Fed. 260; 49 U. S. App. 453] 26: 397

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- In general, see Note, 26: 49  
 Right of receiver appointed by state court to sue in Federal court. [80 Fed. 337; 42 U. S. App. 483] 25: 453  
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 Citizenship as affecting the jurisdiction of the Federal courts, see Note, 10: 253  
 By national bank receiver, in Federal court, without regard to citizenship or amount in controversy. [94 Fed. 370] 37: 369  
 Denial of motion to substitute receiver for corporation as plaintiff. [77 Fed. 117; 40 U. S. App. 710] 23: 65  
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 Right to enforce stockholder's liability. [97 Fed. 297] 38: 193  
 Suit in equity to enforce against stockholders in national banks assessment for less than full amount of liability. [99 Fed. 801] 40: 93  
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 Equitable jurisdiction of suit by bank receiver to recover funds unlawfully diverted. [94 Fed. 582] 36: 402  
 Recovery by bank receiver of dividends paid after bank insolvent. [96 Fed. 279] 37: 479  
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 Action in equity by, to recover bank dividends unlawfully paid. Id.  
 Running of limitations against bank receiver's right to recover back dividends. Id.  
 Defense to action to recover back bank dividends. Id.  
 Proper party to bring suit to set aside fraudulent transfer of bank stock. [72 Fed. 402; 36 U. S. App. 462] 18: 618  
 Of bank, action by, to recover deposit in another bank, defense. [61 Fed. 551; 26 U. S. App. 67] 9: 606  
 Of national bank, right to sue on note given for accommodation of bank. [85 Fed. 407; 52 U. S. App. 577] 29: 229  
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 Enjoining collection of disputed taxes on railroad property in hands of. [87 Fed. 789; 59 U. S. App. 69] 31: 321  
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 Bank stockholder's right to counterclaim for fraudulent representation in action to recover assessment. [97 Fed. 865] 38: 510  
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**Actions against—In general.**

- Generally, see Note, 26: 49  
 Manner of serving process on railroad receiver. [49 Fed. 807; 4 U. S. App. 247] 1: 441  
 Submission to jurisdiction by appearing and going to trial. Id.  
 Appearance, waiver of misnomer, etc. [81 Fed. 946; 53 U. S. App. 410] 27: 19  
 Amending complaint so as to make receivers defendants in official capacity. [49 Fed. 814; 4 U. S. App. 259] 1: 443  
 Power to authorize receiver to defend suit in other jurisdiction. [70 Fed. 129; 36 U. S. App. 167] 17: 16  
 Receiver no status in personal actions against debtor until made party thereto on own application. [87 Fed. 843; 58 U. S. App. 109] 31: 249

**RECEIVERS—continued.**

Duty to prosecute effectively and without unnecessary delay.

[95 Fed. 734] 37: 234

Jurisdiction to enforce lien on vessel sent by receiver into other jurisdiction.

[66 Fed. 565; 29 U. S. App. 447] 13: 635

Admiralty jurisdiction of proceedings against colliding steamship in possession of.

[63 Fed. 132; 21 U. S. App. 466] 11: 111

Of national bank, necessity of joining, as party to suit.

[79 Fed. 189; 48 U. S. App. 235] 24: 476

Of railroad not necessary or proper party to suit to enforce subscription for stock.

[74 Fed. 16; 43 U. S. App. 252] 20: 207

In foreclosure suit, not proper party to action for tort committed before appointment.

[83 Fed. 93; 48 U. S. App. 562] 27: 460

Decreeing accounting, necessity of joining comptroller of currency.

[75 Fed. 148; 41 U. S. App. 529] 21: 282

National bank receiver no right to remove cause to Federal court when not necessary party.

[98 Fed. 151] 38: 682

**—Obtaining leave.**

Necessity of obtaining leave. [81 Fed. 529; 52 U. S. App. 253] 26: 46

When leave required before making receiver party. [95 Fed. 734] 37: 234

Action against, in state court, without leave of Federal court.

[73 Fed. 112; 41 U. S. App. 33] 19: 385

Of railroads, effect of act authorizing suits against, without leave.

[49 Fed. 807; 4 U. S. App. 247] 1: 441

Effect of judgment for, in action against, without leave.

[61 Fed. 731; 22 U. S. App. 313] 10: 28

Overruling objection to intervening petition against receiver as filed without leave, equivalent to leave.

[95 Fed. 734] 37: 234

**Judgments against.**

Conclusiveness of Judgment, see JUDGMENT.

Of national bank, proper decree in suit to establish claim and right to dividend.

[75 Fed. 148; 41 U. S. App. 529] 21: 282

Conclusiveness of decree by default against.

[95 Fed. 747] 37: 240

Conclusiveness of judgment as to fund from which claims payable.

[91 Fed. 22; 61 U. S. App. 678] 33: 313

Conclusiveness of judgment against, on foreign stockholder of corporation.

[95 Fed. 747] 37: 240

Right of, to object to decision on ground that certain parties not formally notified.

[66 Fed. 378; 24 U. S. App. 601] 13: 525

Lien of judgments obtained between entry of appointment and approval of bond.

[80 Fed. 441; 42 U. S. App. 417] 25: 540

Right to contest validity of judgment against bank, though not party.

[93 Fed. 46] 35: 187

Proper form of order where receiver charged personally on accounting with debt incurred by him.

[98 Fed. 499] 39: 132

**Compensation.**

Notice of motion to fix, required. [67 Fed. 388; 32 U. S. App. 187] 14: 444

Allowance to counsel for receiver, proper.

[99 Fed. 495] 39: 615

Making annual allowance for services of counsel.

[66 Fed. 847; 25 U. S. App. 251] 14: 363

Amount allowed for expenses and fees, not disturbed on appeal.

[87 Fed. 505; 59 U. S. App. 74] 31: 94

Appointment, on application of intervener, of receivers for property in custody of court not ground for allowance of solicitor's fees from fund.

[100 Fed. 162] 40: 319

**RECEIVERS—continued.**

- Cost of receivership charged against funds in hands of receiver appointed by court on own motion. [99 Fed. 495] 39: 615
- Expense of trips to Europe at bondholder's suggestion. [87 Fed. 505; 59 U. S. App. 74] 31: 94
- Traveling expenses in going to and from residence in interests of railroad property. Id.
- Considering that railroad was part of minor system and operated at a loss, in determining amount. [66 Fed. 847; 25 U. S. App. 251] 14: 363
- What sufficient compensation for operating street railroad. [70 Fed. 746; 30 U. S. App. 511] 17: 360
- What sufficient counsel fees for services to receiver of street railroad. Id.
- When appointment void as contrary to public policy. [75 Fed. 168; 44 U. S. App. 586] 21: 288
- Taxable, as part of costs, and entitled to priority over receiver's certificates. [70 Fed. 643; 30 U. S. App. 504] 17: 310
- Compensation, waiver of objection that receiver ought to have been discharged years before. [81 Fed. 759; 52 U. S. App. 425] 26: 596

**Bonds.**

- Requiring bond from receiver appointed to take possession of timber cut. [90 Fed. 136; 61 U. S. App. 487] 32: 536
- Liability of sureties for money embezzled by receiver, though bill under which regular appointment made, dismissed for lack of jurisdiction. [99 Fed. 489] 39: 609
- Directing repayment to sureties of money paid into court in lieu of purchase money on sale, embezzled by receiver. Id.
- Summary decree against surety on common law bond conditioned for faithful discharge of duties and compliance with orders of court. [98 Fed. 499] 39: 132

**Foreign and ancillary receivers.**

- Of foreign corporation, ground for appointment. [58 Fed. 644; 19 U. S. App. 203; 24 L. R. A. 776] 7: 412
- No pledge required from foreign receiver on turning over for distribution funds collected by ancillary receiver. [74 Fed. 616; 41 U. S. App. 39] 20: 563
- Title not recognized to prejudice of citizens of state. [88 Fed. 130; 59 U. S. App. 610] 31: 424
- Appointed in different states, ancillary to one first appointed. [87 Fed. 94; 57 U. S. App. 493] 30: 563
- Permitting ancillary receiver to set up same defenses as corporation in foreclosure suit. [73 Fed. 956; 36 U. S. App. 563] 20: 133
- Original receiver appointed as ancillary also subject to orders of court appointing him as such. [98 Fed. 499] 39: 132

**Right to appeal.**

- What Decrees Appealable, see **APPEAL AND ERROR.**
- Right to appeal from provision of order appointing. [61 Fed. 225; 22 U. S. App. 154] 9: 457
- From judgment against corporation. [70 Fed. 129; 36 U. S. App. 167] 17: 16
- Railroad receiver's right to appeal from decree awarding preference to claim for supplies. [80 Fed. 969; 53 U. S. App. 302] 26: 279
- In railway foreclosure, right to appeal from judgment for damages. [62 Fed. 232; 8 U. S. App. 597] 10: 352
- Of railroad, right to appeal from judgment for injury to employee. Id.
- Necessary parties to appeal in suit commenced after discharge. [95 Fed. 560] 37: 165
- Not necessary party to appeal from decree for payment by order of court of persons employed by court's authority. [99 Fed. 324] 39: 540

**RECITALS.**

In Deeds, see **DEEDS**.

In Municipal Bonds, see **MUNICIPAL CORPORATIONS**.

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**RECORDS.**

As Evidence, see **EVIDENCE**.

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Of Chattel Mortgages, see **CHATTEL MORTGAGES**.

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Estoppel by, see **ESTOPPEL**.

- What law governs as to registration of assignments for creditors as to property out of state of assignor's residence. [85 Fed. 595; 56 U. S. App. 341] 29: 357
- Of certificate of transfer of pledged stock. [93 Fed. 603] 35: 476
- Of order appointing standing master. [86 Fed. 493; 58 U. S. App. 632] 30: 212

**Instruments relating to land—In general.**

- What proof that deed "filed for record." [61 Fed. 874; 27 U. S. App. 49] 10: 135
- Presumption as to bona fides of junior purchaser, whose deed first recorded. [82 Fed. 381; 53 U. S. App. 499; 40 L. R. A. 393] 27: 305
- Invalidity for delay, as to debts created under mortgagor's will. [67 Fed. 645; 28 U. S. App. 428] 14: 595
- Necessity of recording assignment for creditors in county in which land of firm situated. [80 Fed. 862; 52 U. S. App. 194] 26: 198
- Act curing irregularity in record of instruments, see Note, 39: 184

**—Necessity of record.**

- Demands for deeds of swamp lands. [51 Fed. 487; 10 U. S. App. 227] 2: 343
- Assignments, swamp land certificates, and deeds. [58 Fed. 452; 19 U. S. App. 161] 7: 304
- Deed or mortgage not recorded for twelve years, void as against sale under judgment before registration. [90 Fed. 182; 61 U. S. App. 548] 32: 564
- Failure to record deed securing advances to insolvent bank. [91 Fed. 326; 63 U. S. App. 412] 33: 542
- Mortgagee for value, surrendering security and taking new mortgage. [53 Fed. 854; 9 U. S. App. 406] 4: 55
- Rights of purchaser under recorded power of attorney as against principal's unrecorded deed. [82 Fed. 381; 53 U. S. App. 499; 40 L. R. A. 393] 27: 305

**—Effect as notice.**

- Filing, not actual recording, of mortgage, constitutes constructive notice. [66 Fed. 216; 23 U. S. App. 681] 13: 402
- Foreign, defective certificate, record as notice. [58 Fed. 437; 19 U. S. App. 100] 7: 293
- Effect of variance in mortgagor's name. [77 Fed. 853; 39 U. S. App. 468] 23: 144
- Record of deed not entitled to be recorded. [58 Fed. 437; 19 U. S. App. 100] 7: 293
- Private act of sale registered contrary to law, of no effect. [74 Fed. 616; 41 U. S. App. 39] 20: 563
- From unauthorized recording of land office commissioner's certificate to copy of deed. [66 Fed. 631; 30 U. S. App. 761] 13: 659
- Of deed, effect to put on notice as to fraud. [58 Fed. 470; 8 U. S. App. 436] 7: 319
- Sufficient description of recorded mortgage to give notice of mortgagee's interest. [87 Fed. 617; 59 U. S. App. 102] 31: 145

**RECORDS—continued.**

Of assignment for creditors, as notice of its contents.

[61 Fed. 874; 27 U. S. App. 49] 10: 135

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[75 Fed. 627; 43 U. S. App. 623] 21: 457

**—Notice outside of record.**

Actual notice to creditor of unregistered instrument.

[75 Fed. 929; 43 U. S. App. 713] 21: 568

Outstanding unrecorded deed, purchase at execution sale.

[60 Fed. 322; 23 U. S. App. 232] 8: 641

Attachment of land claimed under unregistered deed, effect of.

[75 Fed. 929; 43 U. S. App. 713] 21: 568

Unrecorded deed from principal, rights of purchaser under recorded power of attorney.

[82 Fed. 381; 53 U. S. App. 499; 40 L. R. A. 393] 27: 306

**—Effect of destruction of record.**

Effect of burning of record on notice to subsequent purchaser.

[61 Fed. 874; 27 U. S. App. 49] 10: 135

Good title acquired by purchaser for value without notice of deed, record of which destroyed.

[87 Fed. 626; 59 U. S. App. 90] 31: 154

Decree incorrectly establishing destroyed record as constructive notice.

[53 Fed. 854; 9 U. S. App. 406] 4: 55

Proof of existence of recorder's certificate of filing indorsed on deed afterwards burned.

[61 Fed. 874; 27 U. S. App. 49] 10: 135

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From Deed as a Mortgage, see MORTGAGES.

From Foreclosure of Mortgage, see MORTGAGES; RAILROADS.

From Forfeiture under Tax Laws, see TAXATION.

From Judicial Sale, see JUDICIAL SALES.

By one joint adventurer, of title conveyed by other as security for individual debts.

[80 Fed. 854; 52 U. S. App. 183] 26: 190

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For Accounting of Profits from Infringement of Patents, see PATENT FOR INVENTION.

Discretion as to recommittal of report.

[51 Fed. 441; 6 U. S. App. 107] 2: 322

Direction of, in suit to enforce rights under occupying claimant's act.

[52 Fed. 439; 10 U. S. App. 298; 18 L. R. A. 266] 3: 176

Effect of oral consent in open court to order of, on right to review.

[63 Fed. 758; 27 U. S. App. 415] 11: 410

Federal court following practice of state courts.

[79 Fed. 817; 51 U. S. App. 88] 25: 205

Whether facts found sustain judgment, only question reviewable on appeal where referee's findings adopted by court.

[99 Fed. 187] 39: 452

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[100 Fed. 1] 40: 240

**REFORMATION OF INSTRUMENTS.**

For the purpose of making void contract legal, power.

[80 Fed. 10; 52 U. S. App. 6] 25: 306

Of unconditional assignment of entire patent.

[73 Fed. 574; 39 U. S. App. 162] 19: 575

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[91 Fed. 28; 62 U. S. App. 392] 33: 319

**REFORMATION OF INSTRUMENTS—continued.**

- Reforming policy of insurance to permit mortgages.  
[75 Fed. 338; 41 U. S. App. 443] 21: 378
- Of insurance policy, to extend time covered by.  
[87 Fed. 63; 57 U. S. App. 638] 30: 532
- When time named in contract for repurchase of property may be extended.  
[80 Fed. 172; 53 U. S. App. 30] 25: 357
- Extension of time to exercise option, in suit to reform instrument.  
[90 Fed. 451; 61 U. S. App. 446] 33: 595
- Laches for which reasonable excuse shown, not prevent. [96 Fed. 773] 37: 584

**Grounds.**

- Relieving party from mistake due to own negligence.  
[90 Fed. 451; 61 U. S. App. 446] 33: 595
- For mistake, must be common to both parties.  
[87 Fed. 63; 57 U. S. App. 638] 30: 532
- Of note, for mutual mistake. [74 Fed. 47; 36 U. S. App. 597] 20: 286
- Mutual mistake in deed shown, authorizing.  
[87 Fed. 498; 59 U. S. App. 82] 31: 87
- Mutual mistake as to nature of estate conveyed by deed.  
[84 Fed. 930; 42 U. S. App. 675] 28: 567
- For mistake in signing deed through party's carelessness.  
[73 Fed. 574; 39 U. S. App. 162] 19: 575
- When mistake in description of land in patent will be corrected.  
[80 Fed. 458; 53 U. S. App. 4] 25: 557
- Right of remote grantee. Id.
- Mistake, notice to third person, reliance on predecessor's ignorance.  
[56 Fed. 278; 15 U. S. App. 79] 5: 502
- Mistake, rights of third persons, overcoming answer. Id.
- Of insurance policy, after death of insured, fraud or mistake authorizing.  
[92 Fed. 769] 34: 663
- For failure to embody parol agreement in written contract through fraud or mistake.  
[87 Fed. 63; 57 U. S. App. 638] 30: 532
- Of insurance policy, for agent's unintentionally false representations.  
[69 Fed. 762; 32 U. S. App. 536] 16: 390
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**REGISTRATION.**

- Of Deed, Mortgage, or Other Instrument, see RECORDS.
- Of Trademark, see TRADEMARKS AND TRADENAMES.

**REHEARING.**

- In Equity, see EQUITY.
- On Appeal, see APPEAL AND ERROR.
- Review of Order Denying, see APPEAL AND ERROR.
- Effect of Motion for, on Time to Take Appeal, see APPEAL AND ERROR.

**REINCORPORATION.**

- See CORPORATIONS; RAILROADS.

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**REINSURANCE.**

- See INSURANCE.

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- Of Letters Patent, see PATENTS.



**RELEASE.**

See also **ACCORD AND SATISFACTION**; **COMPROMISE AND SETTLEMENT**.

Effect of Releasing Joint Judgment Defendant, see **JUDGMENT**.

Of Surety, see **PRINCIPAL AND SURETY**.

Of Vessel, on Stipulation, see **ADMIRALTY**.

Of Guarantor, see **GUARANTY**.

Satisfaction of Mortgage, see **MORTGAGE**.

Procured from one incapable of making.

[66 Fed. 35; 27 U. S. App. 643] 13: 315

Right to disaffirm, for incompetency to make, after voluntarily spending money received.

[64 Fed. 293; 24 U. S. App. 331] 12: 110

By beneficiary, of insurer from liability, when fraudulent.

[90 Fed. 395; 61 U. S. App. 691] 33: 121

Avoiding, because of misstatements as to contents, when opportunity to read.

Id.

From liability for personal injuries, when fraudulent.

[63 Fed. 800; 27 U. S. App. 450] 12: 598

Of damages for personal injuries, fraud in obtaining.

[76 Fed. 66; 43 U. S. App. 476] 22: 60

Dishonest opinion by defendant's surgeon as to extent and character of injuries.

Id.

Meeting plea of release by replication that obtained by fraud.

[90 Fed. 395; 61 U. S. App. 691] 33: 121

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[96 Fed. 773] 37: 584

Of claim for personal injuries, scope and extent.

[60 Fed. 365; 19 U. S. App. 612; 23 L. R. A. 581] 9: 14

Of damages from personal injury, unknown injury.

[76 Fed. 66; 43 U. S. App. 476] 22: 60

Of part of damages from accident, return of money as condition of action for remaining damages.

Id.

Of part of damages for personal injury, effect to prevent recovery for other. Id.

**Consideration.**

Disputed bill.

[59 Fed. 483; 16 U. S. App. 577] 8: 188

From liability under contract.

[92 Fed. 873] 35: 68

May consist in something detrimental to party released.

[80 Fed. 504; 49 U. S. App. 358] 25: 600

Under seal, of all claims from injuries, invalid if without consideration.

[65 Fed. 941; 31 U. S. App. 192] 13: 222

**RELIGIOUS SOCIETIES.**

Decisions of supreme judicatory binding on members and not reviewable by courts.

[92 Fed. 214] 34: 304

Power of general conference to provide for amending church constitution. Id.

Amendment of constitution and creed matter of ecclesiastical cognizance. Id.

Foreign ecclesiastical corporation may hold land for charitable uses.

[68 Fed. 796; 30 U. S. App. 275] 15: 683

Effect of church changing creed on property conveyed to it for value.

[92 Fed. 214] 34: 304

Enjoining trustees illegally elected from holding church property in perversion of trust.

Id.

Prevented from obtaining possession of land by laches.

[71 Fed. 250; 36 U. S. App. 379] 17: 397

Doctrine of laches applicable to controversies between, as to land.

[70 Fed. 179; 36 U. S. App. 110] 17: 387

**REMAINDER.**

Creation, by Will, see **WILLS**.

Conclusiveness of Judgment as Against Remainderman, see **JUDGMENT**.

**REMAINDER—continued.**

- Running of limitation against remainderman.  
[54 Fed. 860; 2 U. S. App. 555] 4: 622
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[53 Fed. 763; 2 U. S. App. 584] 3: 649

**REMANDING.**

- To State Court, see **REMOVAL OF CAUSES.**
- To State Court, of Cause Removed Therefrom, see **APPEAL AND ERROR.**

**REMITTITUR.**

- Of Cause on Appeal or Writ of Error, see **APPEAL AND ERROR.**
- Excess of Recovery, see **APPEAL AND ERROR.**

**REMOTE AND PROXIMATE CAUSE.**

- See **PROXIMATE CAUSE.**

**REMOVAL.**

- Of Fugitive, from One Federal District to Another, see **EXTRADITION.**

**REMOVAL OF CAUSES.**

- Transfer from Territorial Court on Admission of State, see **COURTS.**
- Appeal from Order Remanding Cause, see **APPEAL AND ERROR.**
- Remand by Circuit Court of Appeals Where Record Fails to Show Jurisdiction, see **APPEAL AND ERROR.**
- Costs in Circuit Court of Appeals in Case Improperly Removed, see **COSTS.**
- No jurisdiction conferred by intervention.  
[67 Fed. 1; 32 U. S. App. 116] 14: 285
- Effect of stipulation to consolidate actions. Id.
- Plaintiff's right to remove because of cross demand or plea on reconvention.  
[91 Fed. 289; 63 U. S. App. 396] 33: 511
- By third party on whom notice of motion to restrain him from violating decree enjoining erection of buildings, served. [99 Fed. 598] 39: 669
- National bank receiver no right to removal when not necessary party.  
[98 Fed. 151] 38: 682
- Order remanding cause to state court, not appealable.  
[49 Fed. 481; 5 U. S. App. 6] 1: 328  
[90 Fed. 675] 33: 217
- As restricted by state laws, see Note, 1: 515

**How effected; procedure—In general.**

- Right to removal where record, including petition for removal, shows suit of which Federal court has original jurisdiction.  
[66 Fed. 785; 30 U. S. App. 234] 14: 264
- Record on application must show that amount in controversy exceeds \$2,000.  
[65 Fed. 145; 22 U. S. App. 707] 12: 521
- That Federal question involved must appear from plaintiff's complaint.  
[74 Fed. 578; 41 U. S. App. 405] 20: 538  
[72 Fed. 568; 36 U. S. App. 530] 19: 42
- Necessity of nominal or formal defendants joining in the petition.  
[58 Fed. 609; 19 U. S. App. 215] 7: 386
- Petition and bond filed in vacation and acted on in chambers.  
[93 Fed. 697] 35: 151
- By entering consent agreement in Federal court without filing petition and bond in state court.  
[91 Fed. 689; 63 U. S. App. 703] 34: 51
- Necessity of notice of application to parties affected, on application to remove, for local prejudice.  
[59 Fed. 209; 19 U. S. App. 300] 8: 92
- Ex parte* affidavit, failure to state facts showing local prejudice. Id.
- Entry in record finding right to remove, not effect removal.  
[65 Fed. 145; 22 U. S. App. 707] 12: 521

**—Allegations as to citizenship.**

- Of plaintiff's assignor, not necessary, when apparent from other parts of record.  
[58 Fed. 609; 19 U. S. App. 215] 7: 386

**REMOVAL OF CAUSES—continued.**

- Necessity of, appearing from other parts of record. Id.
- Description of party as "of" certain place not equivalent to.  
[59 Fed. 727; 21 U. S. App. 45] 8: 237
- Averment of residence not equivalent to.  
[48 Fed. 769; 2 U. S. App. 148] 1: 91  
[59 Fed. 727; 21 U. S. App. 45] 8: 237
- Insufficient to show diversity, at commencement of action.  
[56 Fed. 529; 15 U. S. App. 104] 6: 1
- Negating citizenship or residence of foreign corporation.  
[58 Fed. 609; 19 U. S. App. 215] 7: 386

**What suits removable.**

- Proceeding for probate of will on appeal from probate court to state circuit court.  
[100 Fed. 680] 40: 638
- Where plaintiff's petition sets out violations of the national banking law.  
[63 Fed. 488; 27 U. S. App. 339] 11: 304
- Actions against Federal receivers, see Note, 26: 52
- Petition for appointment of receiver in aid of execution ancillary and not removable.  
[93 Fed. 280] 35: 296
- Suit to obtain attachment and set aside conveyance as fraudulent, not removable.  
[91 Fed. 689; 63 U. S. App. 703] 34: 51
- Suit against corporation to enjoin building addition to postoffice under contract with secretary of treasury.  
[99 Fed. 598] 39: 669

**Amount in controversy.**

- Jurisdictional amount for purposes of removal, see Notes, 19: 87; 36: 466
- Record on application to remove must show that amount in controversy exceeds \$2,000.  
[65 Fed. 145; 22 U. S. App. 707] 12: 521
- Jurisdiction retained though actual amount reduced by stipulation to less than \$2,000.  
[71 Fed. 560; 37 U. S. App. 626] 18: 242
- Sustaining exceptions to items, after removal, reducing amount below jurisdictional limit.  
[92 Fed. 449] 34: 452

**Time.**

- Time of application; "controversy," see Note, 18: 89
- For local prejudice, time to file petition for.  
[74 Fed. 376; 42 U. S. App. 10] 20: 463
- Before expiration of time within which defendant required to plead.  
[53 Fed. 163; 10 U. S. App. 485] 3: 486
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[61 Fed. 865; 22 U. S. App. 393] 10: 129

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- For prejudice or local influence, see Note, 8: 95
- When alien party.  
[59 Fed. 727; 21 U. S. App. 45] 8: 237
- Right of interveper in action on attachment bond.  
[67 Fed. 1; 32 U. S. App. 116] 14: 285
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[86 Fed. 161; 52 U. S. App. 612] 29: 649

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- Nonresident attachment creditors substituted for sheriff as defendant in replevin.  
[53 Fed. 163; 10 U. S. App. 485] 3: 486
- Effect of substituting administrator for deceased party.  
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- Diverse, right of defendant intervening, after mistrial, to remove cause on account of.  
[86 Fed. 161; 52 U. S. App. 612] 29: 649
- Trustee to hold deed of land, citizen of same state as complainant in suit for specific performance.  
[73 Fed. 900; 36 U. S. App. 586] 20: 103
- Removable only when defendant nonresident of state in which suit brought.  
[72 Fed. 568; 36 U. S. App. 530] 19: 42

**REMOVAL OF CAUSES—continued.**

Suit by corporation for accounting from bond holder, not prevented by making trustees in deed securing bond, parties. [99 Fed. 114] 39: 431

Suit to test title to office in corporation organized in state where suit brought, not removable on ground of. [69 Fed. 481; 18 U. S. App. 724] 16: 300

Surety not merely formal party to action on bond given by insurer to state auditor. [77 Fed. 929; 36 U. S. App. 771] 23: 574

Cause removable, when each party a citizen of different state. [67 Fed. 837; 21 U. S. App. 658] 15: 33

Suit by citizen of state against alien assignee. [98 Fed. 647] 39: 201

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None, in action against principal and surety. [77 Fed. 929; 36 U. S. App. 771] 23: 574

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Right of purchaser of equity of redemption to remove foreclosure suit, because validity of second mortgage litigated. [71 Fed. 4; 36 U. S. App. 242] 18: 83

Suit against trustee and purchaser to set aside deed of trust. [60 Fed. 466; 19 U. S. App. 646] 9: 81

Controversy to compel trustee to deliver papers involved in contract, not separable from suit to enforce contract. [73 Fed. 900; 36 U. S. App. 586] 20: 103

Suit to enforce land contract as modified by tripartite agreement. Id.

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Interposing separate defenses by several defendants to complaint stating single cause of action. [67 Fed. 371; 32 U. S. App. 209] 14: 432

Party seeking must be nonresident of state where suit brought. Id.

**—Suits by or against corporations.**

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As waiver of objections to service of citation. [62 Fed. 712; 23 U. S. App. 384] 10: 605

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**REMOVAL OF CAUSES—continued.**

- Requiring defendant to answer forthwith in case removed to Federal court.  
[65 Fed. 628; 25 U. S. App. 190] 13: 58
- Disregarding prayer for equitable relief in action at law.  
[75 Fed. 43; 41 U. S. App. 761] 21: 208
- Power to continue injunction after removal.  
[55 Fed. 356; 14 U. S. App. 210] 5: 129
- When effected so as to authorize injunction against further proceedings in state court.  
[93 Fed. 280] 35: 295
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[74 Fed. 577; 41 U. S. App. 182] 20: 537
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[76 Fed. 717; 40 U. S. App. 763] 22: 511

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- Person in whom the legal title and right of possession becomes vested.  
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- One to whom bill of lading delivered as security for advance.  
[76 Fed. 930; 48 U. S. App. 55] 22: 622
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[51 Fed. 551; 10 U. S. App. 200] 2: 367
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- For timber, actual possession as prima facie case of title.  
[80 Fed. 954; 54 U. S. App. 54] 26: 272
- By United States, for logs cut on public land.  
[50 Fed. 504; 4 U. S. App. 332] 1: 552

**—Property in custodia legis.**

In state court, of property in custody of Federal court.  
[71 Fed. 106; 36 U. S. App. 395] 17: 631

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- Separate suit by third parties claiming property levied on by marshal.  
[72 Fed. 945; 44 U. S. App. 271] 19: 252
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- Pendency of action to recover attached property from sheriff, not bar bankruptcy trustee's right to property.  
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- Turning over to receiver pursuant to order.  
[51 Fed. 641; 7 U. S. App. 275] 2: 432
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- Conclusiveness of valuation in writ and bond.  
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**Pleadings.**

- Complaint alleging that defendant "wrongfully took" and "unlawfully detains" the property, sufficient.  
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- By United States, for logs, evidence.  
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- Averment of fraudulent use of bill of sale, proof of fraudulent execution.  
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- Correspondence between pleading and proof of justification. Id.
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- Judgment for plaintiff, property not returnable.  
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- As Affecting Jurisdiction, see **COURTS**.
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[55 Fed. 812; 5 U. S. App. 26] 5: 276

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- When prima facie evidence of title from bill of lading overcome. [76 Fed. 930; 48 U. S. App. 55] 22: 622  
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- When bargain complete unless postponed until happening of some future event.  
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- Necessity of separate consideration for.  
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- That cotton will press at a certain rate.  
[48 Fed. 803; 2 U. S. App. 139] 1: 102
- To what time warranty relates. [57 Fed. 451; 15 U. S. App. 218] 6: 416
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- That boiler will operate successfully with muddy water.  
[79 Fed. 43; 49 U. S. App. 108] 24: 441
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[91 Fed. 213; 50 U. S. App. 461] 33: 456
- Of fitness for purpose where positive order for specific article given.  
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[64 Fed. 70; 27 U. S. App. 364] 12: 37

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[73 Fed. 984; 46 U. S. App. 52] 20: 233

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Presumption of agreement to return advance.

[54 Fed. 653; 13 U. S. App. 23] 4: 547

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[91 Fed. 705; 63 U. S. App. 668] 34: 55

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[82 Fed. 799; 49 U. S. App. 596] 27: 171

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[73 Fed. 603; 43 U. S. App. 169] 19: 599

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[64 Fed. 569; 22 U. S. App. 635] 12: 306

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Election to rescind, how shown.

[83 Fed. 684; 55 U. S. App. 125] 28: 9

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[66 Fed. 483; 31 U. S. App. 202] 13: 552

Purchaser of bank stock may rely on president's statement.

[60 Fed. 17; 13 U. S. App. 649] 8: 444

Of sale of bank stock, after insolvency of bank.

[52 Fed. 77; 2 U. S. App. 434] 2: 629

[60 Fed. 17; 13 U. S. App. 649] 8: 444

Effect on liability to assessment.

[52 Fed. 77; 2 U. S. App. 434] 2: 629

Seller's right to refuse further performance after refusal by purchaser.

[63 Fed. 84; 27 U. S. App. 277] 11: 33

Sale of bank stock in exchange for land, third parties with notice.

[52 Fed. 77; 2 U. S. App. 434] 2: 629

For breach of warranty, duty to save unnecessary loss to seller.

[80 Fed. 930; 51 U. S. App. 286] 26: 259

For breach of warranty, several distinct articles covered by same warranty.

Id.

Seller's duty to return notes, liability in case of failure.

[54 Fed. 32; 6 U. S. App. 503] 4: 169

When vendor resells before expiration of term of credit or without notice.

[80 Fed. 665; 54 U. S. App. 35] 26: 75

Right to recover back amount paid with interest.

Id.

For fraud, measure of damages on.

[73 Fed. 994; 36 U. S. App. 634] 20: 244

Receipt of goods after, delay in notifying seller.

[59 Fed. 83; 16 U. S. App. 311] 8: 14

For defects in goods, waiver of.

[53 Fed. 494; 3 U. S. App. 358] 3: 600

Refusal to accept bonds until stipulated evidence of legality furnished as rescission.

[81 Fed. 928; 54 U. S. App. 137] 27: 6

Abandonment by buyer of election to rescind for dissatisfaction, what constitutes.

[79 Fed. 611; 49 U. S. App. 253] 25: 129

Effect of silence, delay, acquiescence, or retention after discovering fraud.

[72 Fed. 402; 36 U. S. App. 462] 18: 618

Purchaser cannot rescind in part and enforce as to remainder.

[73 Fed. 984; 46 U. S. App. 52] 20: 233

**Remedies of buyer.**

Sale of entire stock of corporation, specific performance.

[53 Fed. 86; 6 U. S. App. 348] 3: 443

Where seller refuses to deliver on credit, but offers to deliver for cash at reduced price.

[63 Fed. 62; 22 U. S. App. 483; 26 L. R. A. 167] 11: 27

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[73 Fed. 994; 36 U. S. App. 634] 20: 244

**SALE—continued.**

- On breach of guaranty as to weights and grades, condition precedent. [85 Fed. 603; 52 U. S. App. 537] 29: 369
- Purchaser's right to recover amount paid on failure to pay balance as agreed. [70 Fed. 949; 30 U. S. App. 571] 17: 532
- Recovery by buyer, unable to perform, of part of purchase price paid. [62 Fed. 712; 23 U. S. App. 384] 10: 605
- Evidence that similar articles purchased by others worked properly, admissible. [74 Fed. 681; 43 U. S. App. 383] 20: 662
- Expert evidence as to difference between samples and articles furnished purchaser. [100 Fed. 595] 40: 577
- Purchaser's right to join action for fraud and for breach of warranty, but not for rescission. [73 Fed. 994; 36 U. S. App. 634] 20: 244
- Written contract waiving all claim for shortage not available to seller when procured by fraud. [97 Fed. 854] 38: 444
- Necessity of proving ability to pay purchase price in action for nondelivery. [97 Fed. 477] 38: 293

**Remedies of seller—In general.**

- Accrual of seller's right of action. [59 Fed. 83; 16 U. S. App. 311] 8: 14
- When time for bringing action for breach of contract for sale of timber accrues. [74 Fed. 616; 41 U. S. App. 39] 20: 503
- In case of substantial but not complete performance, reducing recovery by damages. [81 Fed. 261; 49 U. S. App. 438] 26: 389
- Evidence of attempts to induce seller to arbitrate, to explain delay in selling goods to save loss. [80 Fed. 930; 51 U. S. App. 286] 26: 259
- Right to resell and hold buyer for difference between proceeds and contract price. [80 Fed. 641; 47 U. S. App. 713] 26: 59
- Purchaser's choice of remedies where sale induced by material false statement. [72 Fed. 387; 36 U. S. App. 448] 18: 606
- [73 Fed. 994; 36 U. S. App. 634] 20: 244

**—Action for price; defenses.**

- Defect in goods as bar. [62 Fed. 375; 18 U. S. App. 603] 10: 422
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- Burden to prove source of defects. [50 Fed. 437; 12 U. S. App. 295] 5: 538
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- Defense, admissibility of report of insurance inspector. [62 Fed. 375; 18 U. S. App. 603] 10: 422
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- Evidence of cost of conforming pipes to underwriters' schedule. [62 Fed. 375; 18 U. S. App. 603] 10: 422
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**Stoppage in transitu.**

- After deposit in bonded warehouse. [54 Fed. 306; 7 U. S. App. 544] 4: 352
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- Fraudulent design to resell under false label. [66 Fed. 240; 33 U. S. App. 1] 13: 426

**Damages for breach—In general.**

- Only such as naturally flow or reasonably to be anticipated. [92 Fed. 293] 34: 354

**SALE—continued.**

- Liability of maker and seller to third person for injuries from defects in article sold. [87 Fed. 109; 58 U. S. App. 91] 30: 567
- For refusal to receive goods to be manufactured where notice received before manufacture. [92 Fed. 486] 34: 489
- Of contract to sell and deliver timber at certain points. [74 Fed. 444; 42 U. S. App. 21] 20: 503
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- Difference between contract price and market value, failure to deliver. [92 Fed. 290] 34: 351
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- For sale of colliery output. [62 Fed. 136; 26 U. S. App. 121] 10: 302
- Refusal of buyer to accept. [76 Fed. 427; 39 U. S. App. 335] 22: 261
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- Provision for forfeiture of cash payment on growing crop in case purchase not completed, a forfeiture. [98 Fed. 692] 39: 235

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- Profits on resale. [57 Fed. 451; 15 U. S. App. 218] 6: 416
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- Solvency of buyer at date of purchase, evidence that he made profits during prior years. [83 Fed. 64; 49 U. S. App. 592] 27: 439
- Value of his assets sometime after purchase. 1d.
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**SALVAGE.**

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**Right to compensation; who entitled; salvage services.**

- Towing grounded steamer from off shore sand bar. [94 Fed. 214] 36: 201

**SALE—continued.**

- Effect of request for aid by master of vessel in distress. [82 Fed. 751; 54 U. S. App. 238] 27: 258
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- What constitutes abandonment of vessel entitling seamen to salvage. [73 Fed. 859; 38 U. S. App. 536] 20: 70
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- Services rendered by master while vessel detained in civil suit. [75 Fed. 598; 24 U. S. App. 559] 21: 448
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- Construction of contract providing for no payment unless vessel delivered "safely" in port. [98 Fed. 735] 39: 248
- Contract set aside for fraudulent concealment by salvor. [70 Fed. 631; 25 U. S. App. 453] 17: 300
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- Particular instance. *Id.*
- Contract for services at instance of master who is part owner, upheld, in absence of fraud, or other misconduct. [98 Fed. 735] 39: 248
- Contract for compensation, when inequitable. [57 Fed. 851; 15 U. S. App. 181] 6: 614

**Duty and liability of salvors.**

- Duty to preserve derelict. [84 Fed. 202; 51 U. S. App. 754] 28: 327
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- Relevancy of fact that severe storm occurred shortly after rescue. [82 Fed. 751; 54 U. S. App. 238] 27: 258
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**SALE**—continued.

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[53 Fed. 840; 2 U. S. App. 520] 4: 47
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[69 Fed. 104; 29 U. S. App. 718] 16: 164
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[99 Fed. 570] 39: 653
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[82 Fed. 755; 54 U. S. App. 245] 27: 183
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- \$20,000 for services, contingent on success, for removing vessel aground on dangerous reef, where cargo of value of \$105,000. [98 Fed. 735] 39: 248
- Award of \$1,500 to tug, and same amount to crew, held sufficient for extinguishing fire in steamship at anchor. [62 Fed. 761; 23 U. S. App. 435] 10: 629
- Steamship with cargo worth about \$160,000, no unusual risk, \$20,000 held sufficient. [62 Fed. 487; 8 U. S. App. 626] 10: 506
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**SALE**—continued.

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Reducing amount on appeal where vessel greatly overvalued.

[66 Fed. 590; 30 U. S. App. 153] 13: 647

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One-third value property salvaged to one of tugs rendering assistance, excessive. [87 Fed. 652; 59 U. S. App. 16] 31: 187

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[86 Fed. 665; 58 U. S. App. 11] 30: 292

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[48 Fed. 737; 1 U. S. App. 47] 1: 81

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[51 Fed. 958; 2 U. S. App. 317] 2: 581

**Apportionment of compensation.**

Apportionment held proper, one salvor coming in as subordinate of other.

[55 Fed. 416; 14 U. S. App. 236] 5: 159

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Right of cargo of salving vessel to share in salvage, implied agreement as to.

[60 Fed. 921; 13 U. S. App. 662] 9: 292

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[90 Fed. 435; 61 U. S. App. 521] 33: 161

Reliance upon vessel's nondenial of allegations showing rights of salvors *inter se*.

[55 Fed. 416; 14 U. S. App. 236] 5: 159

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[90 Fed. 435; 61 U. S. App. 521] 33: 161

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Id.

As between vessel and officers and crew, the better policy.

[60 Fed. 921; 13 U. S. App. 662] 9: 292

**Apportionment of burden; contribution; reimbursement.**

Specie must bear share of.

[86 Fed. 340; 57 U. S. App. 688] 30: 70

Specie sent back to port of shipment after stranding of vessel and before salvage operations begin not bound to contribute.

[74 Fed. 564; 45 U. S. App. 1] 20: 349

No distinction between proportions charged against different kinds of cargo.

[86 Fed. 340; 57 U. S. App. 688] 30: 70

Awarding separate sums of different proportional amounts against ship and cargo separately salvaged.

Id.

Liability of vessel to reimburse cargo owners for salvage claimants.

[50 Fed. 841; 8 U. S. App. 42] 2: 50

**SANITARY DISTRICT.**

Represented by its board of trustees as a body.

[91 Fed. 833] 34: 91

Authority of chief engineer of, to make representations to intending bidder for contract.

Id.

**SATISFACTION.**

See ACCORD AND SATISFACTION.

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Of Mortgage, see MORTGAGE.

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**SCHOOL AND SCHOOL DISTRICTS.**

School Lands, see PUBLIC LANDS.

Corporate school board in city distinct from city.

[94 Fed. 324] 36: 278

Interest on delinquent school taxes belongs to district.

[91 Fed. 574; 63 U. S. App. 455] 34: 15

**SCHOOL AND SCHOOL DISTRICTS—continued.**

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**Creation and division of school districts.**

Act curing defective organization of school district, see Note, 39: 183

Incorporation of district, extent of, validity.  
[61 Fed. 914; 22 U. S. App. 418] 10: 154

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Apportionment of indebtedness on division of. Id.

**Officers.**

Selection of at special election. [61 Fed. 914; 22 U. S. App. 418] 10: 154

Adverse interest of, in contract with board, effect of.  
[80 Fed. 366; 49 U. S. App. 271] 25: 492

Duties and powers of secretary, service of summons upon.  
[61 Fed. 914; 22 U. S. App. 418] 10: 154

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**Meeting and elections.**

Special election, choosing school officers at.  
[61 Fed. 914; 22 U. S. App. 418] 10: 154  
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[62 Fed. 778; 27 U. S. App. 244] 10: 637

**Judgments; warrants.**

Judgment against board of directors, power to issue bonds to pay.  
[60 Fed. 387; 23 U. S. App. 29] 9: 37

Enjoining collection of judgment against.  
[59 Fed. 742; 19 U. S. App. 442] 8: 241

Legal defense, moral obligation to pay. Id.

Query, as to showing of jurisdictional amount by taxpayer. Id.

Judgments against, proceedings to collect, mandamus, necessary parties.  
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Warrants for erection of school building void for excessiveness.  
[63 Fed. 938; 27 U. S. App. 479] 11: 514

**Bonds—Power to issue.**

To pay judgment against board of directors.  
[60 Fed. 387; 23 U. S. App. 29] 9: 37

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[56 Fed. 197; 12 U. S. App. 340] 5: 468

**—Rights of bona fide purchasers.**

Issued by school district without statutory authority.  
[56 Fed. 197; 12 U. S. App. 340] 5: 468

Issued for unauthorized purpose. [62 Fed. 778; 27 U. S. App. 244] 10: 637

Notice to holder, purchasing below minimum price from intermediate holder.  
Id.

Executed sale to intermediate purchaser, what constitutes. Id.

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Recital of compliance with requirements, constitutional requisites. Id.

Improper application of proceeds. Id.

**SCIRE FACIAS.**

To Revive Judgment, see JUDGMENT.

To Enforce Liability for Costs, see COSTS.

To enforce forfeited bail bond. [54 Fed. 221; 12 U. S. App. 125] 4: 296

**SEAL.**

- Amending writ of error by affixing. [61 Fed. 747; 22 U. S. App. 372] 10: 35  
 Symbol "L. S." regarded as adopted as corporate seal. [95 Fed. 23] 36: 633  
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     [57 Fed. 159; 6 U. S. App. 649] 6: 302  
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     [86 Fed. 500; 58 U. S. App. 643] 30: 218  
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 Unnecessary to show that agent's authority to make sealed contract was under  
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 Omission of, from township obligation denominated bonds on face, not prevent  
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**SEALS.**

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**SEAMEN.**

Right to Salvage Compensation, see SALVAGE.

Penalty for harboring or secreting vessel not owned by citizen.

[58 Fed. 694; 15 U. S. App. 243] 7: 436

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[74 Fed. 845; 41 U. S. App. 20] 21: 145

Protection of, on appeal, as wards of admiralty.

[74 Fed. 899; 33 U. S. App. 510] 21: 162

**Wages—In general.**

Forfeiture of, by refusal in foreign port to proceed with voyage.

[87 Fed. 361; 56 U. S. App. 630] 31: 6

Effect of discharge and settlement on right to interpose set-off against order  
 for wages. [79 Fed. 998; 51 U. S. App. 140] 25: 299

Seamen cannot stipulate in shipping agreement, for allotment of wages to cred-  
 itor. [86 Fed. 908; 56 U. S. App. 713] 30: 457

No deduction for money paid under invalid allotment of wages to creditor. Id.

Deduction from, for arrest and detention for leaving ship without cause.

[35 Fed. 978; 57 U. S. App. 46] 29: 514

No presumption of causeless desertion from arrest, detention in jail, appear-  
 ance before counsel, and subsequent detention by police. Id.

To what trade act restricting advances applicable.

[60 Fed. 105; 15 U. S. App. 205] 8: 505

Deduction of orders for excessive amounts, receipts in full. Id.

Extra wages for services for unloading cargo in harbor of refuge.

[72 Fed. 535; 38 U. S. App. 219] 19: 151

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[66 Fed. 340; 30 U. S. App. 214] 13: 504

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[51 Fed. 44; 3 U. S. App. 168] 2: 95

Reasonable compensation charged for stevedoring under provision for pay-  
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On cargo.

[93 Fed. 686] 35: 544

Of stevedore for loading or unloading cargo at other than home port.

[51 Fed. 954; 2 U. S. App. 349] 2: 569

[57 Fed. 224; 13 U. S. App. 459] 6: 313

Priority.

[49 Fed. 577; 9 U. S. App. 15] 1: 379

Good faith shown to entitle heir to precedence over mortgage.

[90 Fed. 825; 62 U. S. App. 162] 33: 298

Priority over lien for towage and supplies.

[77 Fed. 476; 42 U. S. App. 206] 23: 343

**SEAMEN—continued.**

For money advanced to pay seamen's wages.

[87 Fed. 361; 56 U. S. App. 630] 31: 6

While moving flat boat about and working pile driver.

[86 Fed. 907; 58 U. S. App. 256] 30: 480

Lien for wages of crew engaged by part owner chartering fishing vessel from co-owners.

[97 Fed. 111] 38: 73

Of master of vessel.

[57 Fed. 845; 15 U. S. App. 229] 6: 608

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[75 Fed. 598; 24 U. S. App. 559] 21: 448

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[93 Fed. 686] 35: 544

Who are seamen for purpose of, employees on dredge and scows.

[77 Fed. 476; 42 U. S. App. 206] 23: 343

**Liability for injuries to seamen and stevedores—In general,**

Negligence of both master and servant; division of damages, see Note, 30: 678

Injury to fireman, no fault shown. [62 Fed. 765; 23 U. S. App. 395] 10: 634

Failure of electric lights while unloading cotton at night from barge on river steam-boat.

[99 Fed. 520] 39: 620

Unloading cotton from barge on steamer after dark while moving down river, not negligence.

Id.

Liability of owner for injury to member of crew, cocharterer with master, to whom defect known.

[56 Fed. 111; 5 U. S. App. 382] 5: 438

Allegations held insufficient to show that libellant was in employ of ship on that dangerous appliances were furnished by ship's officers.

[77 Fed. 324; 41 U. S. App. 438, 467, 609] 23: 187

Sufficient allegation as to master's negligence in employing incompetent winchman.

[93 Fed. 240] 34: 558

No recovery allowed where mate not in command or assisting.

[73 Fed. 267; 41 U. S. App. 27] 19: 500

Stevedore's employee injured by concurring negligence, other employees of stevedore, employees of third person and seamen at winch.

[86 Fed. 471; 52 U. S. App. 592] 30: 199

Liability to stevedore for injury naturally resulting from act of employee easily guarded against.

[86 Fed. 658; 56 U. S. App. 619; 46 L. R. A. 58] 30: 333

**—Unsafe place.**

Duty of vessel's master to provide stevedore with safe place to work.

[86 Fed. 658; 56 U. S. App. 619; 46 L. R. A. 58] 30: 333

By open hatchway provided with usual combings.

[71 Fed. 314; 33 U. S. App. 302] 18: 54

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[53 Fed. 843; 14 U. S. App. 710] 13: 677

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[94 Fed. 221] 36: 208

Liability for placing keg on hatch covers so as to fall on stevedore.

[86 Fed. 658; 56 U. S. App. 619; 46 L. R. A. 58] 30: 333

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Id.

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[59 Fed. 479; 20 U. S. App. 212] 8: 185

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[52 Fed. 390; 8 U. S. App. 129] 3: 155

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[83 Fed. 519; 42 U. S. App. 666] 31: 496

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[60 Fed. 105; 23 U. S. App. 72] 8: 512

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[85 Fed. 271; 54 U. S. App. 723; 46 L. R. A. 122] 29: 141**SEAWORTHINESS.**

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**SHIPPING.****I. IN GENERAL.****II. PUBLIC REGULATIONS.****III. AUTHORITY AND RIGHTS OF MASTER AND AGENT.****IV. TITLE TO VESSEL.****V. CHARTER PARTY.****VI. CARRIAGE OF GOODS.****VII. DEMURRAGE.****VIII. LIABILITY FOR TORTS; INJURIES TO PASSENGERS.****IX. GENERAL AVERAGE.****X. LIMITATION OF LIABILITY.****XI. BOTTOMRY.**

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[59 Fed. 182; 16 U. S. App. 334] 8: 78

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[72 Fed. 936; 38 U. S. App. 441] 19: 243

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[100 Fed. 490] 40: 510

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[55 Fed. 666; 6 U. S. App. 581] 5: 229

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[50 Fed. 934; 2 U. S. App. 242] 2: 85

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[71 Fed. 310; 33 U. S. App. 330] 18: 49

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[74 Fed. 649; 45 U. S. App. 32] 20: 581

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[74 Fed. 649; 45 U. S. App. 32] 20: 581

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[60 Fed. 448; 23 U. S. App. 50] 9: 63

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[50 Fed. 835; 3 U. S. App. 147] 2: 45

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[53 Fed. 394; 3 U. S. App. 333] 3: 573

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[91 Fed. 168; 62 U. S. App. 343] 33: 432

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- Breach of stipulation due to propeller, not under owner's control.  
Id.
- Tender of other tonnage in anticipation of default.  
Id.
- Liability of vessel for failure to make stipulated number of trips due to charterer's default in loading.  
[55 Fed. 681; 6 U. S. App. 607] 5: 242
- Charter of propeller and schooner, stipulation to make as many trips as possible, when broken.  
[55 Fed. 666; 6 U. S. App. 581] 5: 229
- Propeller towing additional vessels, custom.  
Id.
- Schooner equally liable with propeller.  
Id.
- Who liable for negligence of pilot.  
[55 Fed. 336; 14 U. S. App. 187] 5: 120

**Liability for loss of or injury to cargo.**

- Damages to cargo by vermin, see Notes, 18: 231; 19: 473
- Proper forum in which to claim redress for loss of part of cargo.  
[50 Fed. 934; 2 U. S. App. 242] 2: 83
- American vessel, charter party signed upon high seas.  
Id.
- Insufficiency of evidence as to quantity loaded.  
[56 Fed. 605; 14 U. S. App. 405] 6: 49
- Stipulation that charterer be deemed special owner, direct liability of vessel on contracts of affreightment.  
[61 Fed. 113; 26 U. S. App. 63] 9: 390

**SHIPPING—continued.**

- Validity of provision that cargo alongside shall be at charterer's risk.  
[50 Fed. 934; 2 U. S. App. 242] 2: 85
- Duty of master. Id.
- Owner liable to charterer for damage to cargo from detention at quarantine.  
[72 Fed. 207; 30 U. S. App. 710] 18: 511
- Proximate cause of deterioration of bananas, delay of vessel in arriving, or premature cutting.  
[55 Fed. 1003; 8 U. S. App. 405] 5: 386
- "Accident of the sea and of the machinery." Id.
- Breaking of junk ring on engine cylinder, latent defect. Id.

**Freight.**

- Overcharge of freight, what constitutes, admiralty jurisdiction.  
[55 Fed. 666; 6 U. S. App. 581] 5: 229
- On shortage, amount of. [50 Fed. 934; 2 U. S. App. 242] 2: 85
- On part of cargo damaged and sold on voyage.  
[53 Fed. 828; 3 U. S. App. 366] 4: 34

**Appointment of stevedore.**

- Right of charterer to select. [56 Fed. 603; 15 U. S. App. 155] 6: 47
- Vessel's right to select stevedore to load cargo furnished by charterer.  
[65 Fed. 812; 25 U. S. App. 161] 13: 148
- Custom as to shipper of lumber selecting own stevedore. Id.
- Provision that customary rates shall be paid for stevedoring.  
[99 Fed. 1004] 40: 217
- Reasonable compensation charged under provision in charter party for payment of "customary rates." Id.

**VI. CARRIAGE OF GOODS.**

- Shipper not estopped to deny unreasonableness of bill of lading.  
[94 Fed. 180] 36: 135
- Bill of lading describing lumber as in apparent good condition, duty to investigate.  
[75 Fed. 422; 38 U. S. App. 693] 21: 422
- Agent of steamboat association, power to bind all boats jointly by bill of lading.  
[62 Fed. 407; 22 U. S. App. 344] 10: 454
- Evidence held to show a custom of the port as to unloading on wharves, but not as to time goods shall be allowed to remain on wharves.  
[80 Fed. 933; 52 U. S. App. 199] 26: 261
- Place of discharging cargo, custom of ports.  
[51 Fed. 606; 1 U. S. App. 253] 2: 400
- Contract to deliver at specified port not agreement to deliver at particular wharf owned by consignee.  
[66 Fed. 344; 21 U. S. App. 650] 13: 506
- Going aground, proximate cause of salvage service to cargo.  
[50 Fed. 841; 8 U. S. App. 42] 2: 50
- Liability of vessel to reimburse cargo owners for payments on account of salvage service. Id.

**Freight.**

- Liability for want of harmony between bill of lading and shipping contract.  
[53 Fed. 1022; 8 U. S. App. 287] 4: 157
- Absolute agreement to pay, failure of vessel to reach port. Id.
- Voluntary acceptance of part of cargo at intermediate port entitles carrier to *pro rata* freight thereon.  
[72 Fed. 285; 38 U. S. App. 243] 18: 561
- Carrier not entitled to *pro rata* freight on part of cargo totally destroyed. Id.
- Vessel owner's right under contract to average rate received though rates on other lines reduced.  
[72 Fed. 204; 25 U. S. App. 695] 18: 508
- Payment of freight on delivery at port of discharge, in absence of other agreement.  
[72 Fed. 285; 38 U. S. App. 243] 18: 561

## SHIPPING—continued.

**Liability for loss or damage to cargo—In general.**

- Stipulation as to law by which carrier's liability determined, ineffective.  
[66 Fed. 604; 35 U. S. App. 6] 13: 653
- For what losses carrier liable. [94 Fed. 180] 36: 135
- Nondelivery of goods by steamer not conversion.  
[68 Fed. 380; 35 U. S. App. 369] 15: 479
- Implied warranty that space allotted to cattle shall be sufficiently ventilated.  
[77 Fed. 315; 45 U. S. App. 210] 23: 181
- Through stranding because of pilot's negligence.  
[71 Fed. 895; 38 U. S. App. 50] 18: 380
- From failure to make soundings during heavy weather. [92 Fed. 1018] 35: 159
- Carrier not exempted from liability to shipper by abandoning vessel to underwriters.  
[54 Fed. 718; 13 U. S. App. 243] 4: 559
- Abandonment of laden schooner, when justified.  
[50 Fed. 477; 1 U. S. App. 173] 1: 533
- Master, prevented from landing at port of destination, selling goods at foreign port after sufficient time to confer with owners, without doing so.  
[66 Fed. 581; 30 U. S. App. 1] 13: 645
- Of ship, for goods lost overboard while loading on lighter.  
[70 Fed. 872; 26 U. S. App. 783, 784] 17: 470
- Failure to inspect packages in after hold after discovering damage by collision to packages in forward holds. [64 Fed. 867; 26 U. S. App. 414] 12: 445
- Notice of damage, discovery of additional damage after giving.  
[61 Fed. 1014; 8 U. S. App. 580] 10: 232
- Leak, not stranding of vessel, proximate cause of injury.  
[94 Fed. 180] 36: 135
- Vessel owner not liable for damage to frozen meat from latent defect in refrigerating apparatus. [93 Fed. 837] 35: 625
- Libel for injury to cargo construed as for breach of contract not tort.  
[94 Fed. 180] 36: 135
- Diligence relieving from liability for damage by rats to beans.  
[67 Fed. 356; 35 U. S. App. 278] 14: 412
- Right to maintain suit *in rem* against ship not included in provisions that all claims against company or stockholders must be presented within specified time. [94 Fed. 180] 36: 135
- Delay preventing relief for damage to cargo. Id.

**—Presumption and burden of proof as to loss and cause of.**

- Presumption that carrier's default caused damage to goods.  
[74 Fed. 413; 38 U. S. App. 356] 20: 486
- Presumption that water left aboard caused damage to goods.  
[73 Fed. 352; 38 U. S. App. 369] 19: 449
- As to deterioration in shipment. [67 Fed. 794; 35 U. S. App. 173] 14: 650
- Of showing damage caused by inherent defects in goods or by sweat of ship.  
[55 Fed. 525; 2 U. S. App. 582] 5: 207
- As to cause of leak causing damage. [94 Fed. 180] 36: 135
- That injury occasioned by cause excepted in bill of lading.  
[51 Fed. 605; 1 U. S. App. 251] 2: 399  
[94 Fed. 180] 36: 135
- Of showing breakage due to carrier's negligence, where loss by breakage excepted.  
[90 Fed. 114; 61 U. S. App. 147] 32: 534
- Of proving that damage to oil was caused by a sea peril.  
[73 Fed. 352; 38 U. S. App. 369] 19: 449

**—Shortage.**

- Sufficiency of proof of. [49 Fed. 280; 1 U. S. App. 14] 1: 243
- Liability for, under provision in bill of lading making it liable for all deficiency.  
[69 Fed. 211; 35 U. S. App. 427, 584] 16: 191

**SHIPPING—continued.**

Vessel owner not liable for, because master signed bill of lading for more than actually received. [93 Fed. 980] 36: 42

Consignee's duty to apply price of unmarked coffee purchased from vessel to shortage against such vessel. [63 Fed. 272; 26 U. S. App. 144] 11: 180

**—Stowage.**

Liability when cargo stowed in improper place. [61 Fed. 1014; 8 U. S. App. 580] 10: 232

Stowing molasses between decks. [68 Fed. 382; 35 U. S. App. 332] 15: 480

Using packages susceptible to damage from oil as dunnage for casks of oil liable to leak. [73 Fed. 322; 38 U. S. App. 369] 19: 449

Liability for injury to sugar from breaking, by heavy sea, of molasses casks stowed between decks. [68 Fed. 382; 35 U. S. App. 332] 15: 480

Stowing coirdholls shipped as "oil broken stowage" with oil casks. [73 Fed. 322; 38 U. S. App. 369] 19: 449

Trunks not lashed or otherwise secured. [94 Fed. 885] 36: 533

Stowing leaky oil casks in the between-decks, over dry cargo in hold. [73 Fed. 322; 38 U. S. App. 369] 19: 449

Of coffee in compartment adjoining one containing water ballast. [91 Fed. 1003; 63 U. S. App. 782] 34: 168

**—Exceptions and limitations in bills of lading, generally.**

See also *infra*, **Sea perils**, and **X. LIMITATION OF LIABILITY.**

Burden of showing that injury occasioned by excepted cause.  
[51 Fed. 605; 1 U. S. App. 251] 2: 399  
[90 Fed. 114; 61 U. S. App. 147] 32: 534  
[94 Fed. 180] 36: 135

Requiring action on claim to be brought within three months after damage. [85 Fed. 985; 57 U. S. App. 403] 29: 521

Requiring presentation of all claims for damages within thirty days from date of bill of lading, unreasonable. [94 Fed. 180] 36: 135

Limiting liability for excess in value of package over \$100, valid. [69 Fed. 574; 35 U. S. App. 587] 16: 332

Damages to cargo resulting from explosion of detonators forming part of cargo, not within. [91 Fed. 164; 62 U. S. App. 407] 33: 430

Limitation of implied warranty of seaworthiness by bill of lading permitted by Harter act. [68 Fed. 254; 35 U. S. App. 390] 15: 385

Exemption of carrier from liability for injury from defects in refrigerating apparatus not violate Harter act. [93 Fed. 837] 35: 625

Stipulation in contract exempting from damage by latent defects in vessel's hull. [92 Fed. 663; 61 U. S. App. 385] 34: 612

Restricting clause exempting carrier for damage "occasioned by causes beyond his control." [91 Fed. 164; 62 U. S. App. 407] 33: 430

Absence of rivet head within exception of injuries from latent defects. [68 Fed. 254; 35 U. S. App. 390] 15: 385

Obligation to exercise due diligence at beginning of voyage cannot be restricted. 1d.

Bill of lading executed when court held stipulation against liability for negligent navigation void, not affected by subsequent change of law.

[66 Fed. 604; 35 U. S. App. 6] 13: 653

Construed most strongly against shipowners introducing them. [94 Fed. 180] 36: 135

"Dangers of the river," neglecting opportunity to save and reshipe part of cargo. [54 Fed. 718; 13 U. S. App. 243] 4: 559

"Dangers of navigation," inference as to cause of giving way of stanchion. [57 Fed. 399; 14 U. S. App. 626] 6: 410



**SHIPPING—continued.**

Of damage from negligent stowage, validity, stipulation that law of flag (English) shall prevail. [82 Fed. 471; 51 U. S. App. 467] 27: 326

Liberty "to tow and assist vessels in all situations."

[61 Fed. 857; 26 U. S. App. 76] 10: 123

**—Sea perils.**

Loss by perils of the sea, see

Note, 19: 465

Damages by vermin, see

Notes, 18: 231; 19: 473

Burden of proving the damage to oil caused by.

[73 Fed. 322; 38 U. S. App. 369] 19: 449

Damage to cargo held not attributable to.

[78 Fed. 152; 42 U. S. App. 276] 24: 46

When abandonment of vessel justified.

[50 Fed. 477; 1 U. S. App. 173] 1: 533

Meaning of term "perils of the sea."

[74 Fed. 413; 38 U. S. App. 356] 20: 486

Damage to cargo on going adrift a sea peril within exception of bill of lading.

[71 Fed. 895; 38 U. S. App. 50] 18: 380

Water leaking from water-ballast tank.

[92 Fed. 1018] 35: 159

Damage by sea water entering ventilator holes after ventilators carried away by heavy sea.

[73 Fed. 322; 38 U. S. App. 369] 19: 449

By sea water intentionally taken aboard but diverted through rat hole.

[71 Fed. 728; 38 U. S. App. 1] 18: 226

To sugar, by breaking of molasses casks in heavy sea.

[68 Fed. 382; 35 U. S. App. 332] 15: 480

Injury by oil escaping by natural leakage and carried to cargo by water entering ship through sea peril.

[73 Fed. 322; 38 U. S. App. 369] 19: 449

Extraordinary sea perils, failure to use customary amount of dunnage.

[80 Fed. 1003; 51 U. S. App. 71] 26: 372

**—Extent of liability.**

Where damaged goods sold for full market price of sound goods.

[73 Fed. 352; 38 U. S. App. 369] 19: 449

Proof that certain number of sound and injured cattle thrown overboard not render liable for all.

[66 Fed. 776; 35 U. S. App. 44] 14: 88

Ship's duty to separate from entire damage to cargo part damaged by sea peril.

[71 Fed. 728; 38 U. S. App. 1] 18: 226

Sufficiency of evidence as to extent of damage to cargo.

Id.

**—Seaworthiness.**

Implied warranty of seaworthiness, see

Note, 15: 388

What necessary to constitute.

[98 Fed. 636] 39: 197

"Due diligence" and "reasonable means" to make ship seaworthy, failure in respect to.

[79 Fed. 973; 51 U. S. App. 100] 25: 261

Vessel not required to be impregnable to assaults of elements.

[92 Fed. 663; 61 U. S. App. 385] 34: 612

Warranty that ship seaworthy at commencement of voyage.

[94 Fed. 180] 36: 135

Burden on ship to prove seaworthiness at time of sailing.

[99 Fed. 1005] 40: 221

Sufficiency of evidence to show.

[94 Fed. 180] 36: 135

Presumption of unseaworthiness before sailing where vessel soon after leaving port becomes leaky without adequate cause.

[74 Fed. 413; 38 U. S. App. 356] 20: 486

No presumption of unseaworthiness from vessel springing leak after encountering severe marine perils.

Id.

Presumption of unseaworthiness where leak discovered soon after sailing.

[94 Fed. 180] 36: 135

**SHIPPING—continued.**

- Burden of showing good condition of center board trunk by springing of leak in which cargo damaged. [74 Fed. 413; 38 U. S. App. 356] 20: 486
- What sufficient proof of seaworthiness at commencement of voyage. Id.
- Inference of unseaworthiness from abandonment by master and crew. [50 Fed. 477; 1 U. S. App. 173] 1: 533
- Imperfection in sluiceways in bulkheads between vessel compartments. [92 Fed. 1018] 35: 159
- Accidental and temporary obstruction of valves in pipes connecting compartments for solids and for liquids. [91 Fed. 1003; 63 U. S. App. 782] 34: 168
- Failure to shut extra iron cover to porthole closed by heavy glass cover. [68 Fed. 230; 35 U. S. App. 395] 15: 362
- Liability of ship for damages to goods from leaky port. [99 Fed. 1005] 40: 221
- Insecure fastening of both iron and glass covering of port ordinarily fastened before sailing. [98 Fed. 636] 39: 197
- Failure of rivet fastening side plate to fit perfectly. [92 Fed. 663; 61 U. S. App. 385] 34: 612
- Implied guaranty of seaworthiness for carriage of particular cargo. [61 Fed. 1014; 8 U. S. App. 580] 10: 232
- When vessel not seaworthy for carriage of flour. Id.
- Vessel held not seaworthy for carriage of flour and oil in juxtaposition. Id.
- For dry cargo in tanks, connecting with tanks containing liquid, with suitable valves between. [91 Fed. 1003; 63 U. S. App. 782] 34: 168
- Stowing coffee in compartment adjoining one containing water ballast. Id.
- Latent defects not excuse lack of seaworthiness. [94 Fed. 180] 36: 135

**VII. DEMURRAGE.**

- When charterer assumes risk of unforeseen circumstances. [77 Fed. 919; 40 U. S. App. 157; 35 L. R. A. 623] 23: 564
- When charterer's liability for, ceases. [69 Fed. 747; 35 U. S. App. 608] 16: 381
- No provision for, charterer's liability. [49 Fed. 253; 1 U. S. App. 7] 1: 237
- Caused by charterer's failure to perform covenants. [61 Fed. 849; 15 U. S. App. 369] 10: 115
- Stipulation confining liability to cases of negligence. Id.
- Charterer's liability for, not released by signing bills of lading. [88 Fed. 799; 59 U. S. App. 219] 32: 121
- Charterer's right to insist on abandonment of unreasonable customs notwithstanding previous acquiescence. [87 Fed. 1005; 59 U. S. App. 211] 31: 347
- Right to, while cargo detained on board for nonpayment of freight. [76 Fed. 573; 33 U. S. App. 610] 22: 318
- Allowance of rates stipulated in bill of lading. [58 Fed. 600; 5 U. S. App. 484] 7: 384
- Charterers not exempted from, by breakdown of lighter. [71 Fed. 310; 33 U. S. App. 330] 18: 49
- Furnishing all available weighers to other vessels than one required to be discharged according to custom of port. [67 Fed. 361; 28 U. S. App. 389] 14: 417
- Payment of freight not constitute settlement of claim for. [91 Fed. 543; 62 U. S. App. 368] 33: 663
- Interest on. [57 Fed. 236; 14 U. S. App. 562] 6: 317
- Disallowing interest on, where not due to charterer's fault. [91 Fed. 543; 62 U. S. App. 368] 33: 663
- When separated part of cargo must contribute. [77 Fed. 317; 45 U. S. App. 227] 23: 183

## SHIPPING—continued.

**Delay—In general.**

See also Note, 21: 337

Excuse for delay, unprovoked strike.

[77 Fed. 919; 40 U. S. App. 157; 35 L. R. A. 623] 23: 564

Meaning of "default" causing delay. [69 Fed. 747; 35 U. S. App. 608] 16: 381

Charterers liable for delay caused by acts of public enemy. Id.

Allowance of, while vessel injured by collision laid up for repairs.

[98 Fed. 133] 38: 670

Charterer not chargeable with demurrage during time master refuses to sign bill of lading as incorrect. [98 Fed. 316] 39: 97

Consignee liable for delay in pointing out place of discharge.

[66 Fed. 344; 21 U. S. App. 650] 13: 506

Consignee not liable for delay in towing tug. Id.

Master liable for delay in bringing vessel to berth indicated. Id.

Burden as to lack of reasonable diligence.

[77 Fed. 919; 40 U. S. App. 157; 35 L. R. A. 623] 23: 564

Shifting by proof of delay beyond customary time. Id.

**—In loading.**

Implied contract to load with reasonable diligence when no agreed demurrage.

[74 Fed. 247; 33 U. S. App. 464] 21: 334

Impossibility of vessel sailing earlier. Id.

**—In discharging.**

Quick despatch, see

Notes, 14: 657; 21: 342

Effect of custom of port.

[48 Fed. 758; 1 U. S. App. 22] 1: 85

[57 Fed. 236; 14 U. S. App. 562] 6: 317

When customary time for unloading not reasonable time.

[77 Fed. 919; 40 U. S. App. 157; 35 L. R. A. 623] 23: 564

Contract to discharge within reasonable time, in effect agreement to discharge with reasonable diligence. Id.

Implied contract to discharge within reasonable time, when charter or bill silent. Id.

Delay not exceeding time necessary to discharge at dock with inferior facilities.

[84 Fed. 495; 55 U. S. App. 181] 28: 466

Excuses for delay in unloading cargo "free of handling." Id.

Consignee's refusal to receive because of damage from excepted peril. Id.

Negotiations between owner and consignee to purchase at reduced price. Id.

Caused by master's absence. [75 Fed. 422; 38 U. S. App. 693] 21: 422

Vessel chargeable with notice of usage of port as to loading coal from cars.

[74 Fed. 247; 33 U. S. App. 464] 21: 334

Failure to provide lighters for both sides of vessel, consignee's liability.

[48 Fed. 758; 1 U. S. App. 22] 1: 85

Consignee's liability, failure to provide berth.

[56 Fed. 527; 14 U. S. App. 401] 5: 672

Charterers not liable for delay from inability to obtain wharf at which to discharge. [92 Fed. 402; 63 U. S. App. 493] 34: 415

Caused by ship, charterer's liability. [55 Fed. 880; 14 U. S. App. 352] 5: 290

Time allowed for providing berths, liability of charterer.

[55 Fed. 996; 14 U. S. App. 386] 5: 377

Charterer's duty to discharge from all hatches. Id.

"Customary quick despatch" requires platform scales for weighing.

[67 Fed. 354; 28 U. S. App. 383] 14: 656

**Lay days.**

Commencement of, notice to shipper. [49 Fed. 76; 2 U. S. App. 83] 1: 174

Lay days not commence till vessel ready to receive or discharge cargo.

[92 Fed. 402; 63 U. S. App. 493] 34: 415

SHIPPING—continued.

Deducting time lost by reason of storms.	[52 Fed. 163; 2 U. S. App. 297]	2: 650
Excluding time lost by drought.	[49 Fed. 76; 2 U. S. App. 83]	1: 174
	[51 Fed. 30; 2 U. S. App. 177]	2: 92
	[52 Fed. 163; 2 U. S. App. 297]	2: 650
	[52 Fed. 168; 2 U. S. App. 304]	2: 655
	[52 Fed. 169; 2 U. S. App. 307]	2: 656
Excepting detentions caused by political occurrences.	[61 Fed. 849; 15 U. S. App. 369]	10: 115
Failure to give vessel precedence in discharging, not detained beyond lay days.	[58 Fed. 600; 5 U. S. App. 484]	7: 384
Sunday not counted as clear day before lay days commence.	[98 Fed. 316]	39: 97
Meaning of term "working days," Sunday, legal holidays, stormy days.	[52 Fed. 163; 2 U. S. App. 297]	2: 650
Holidays and days on which laborers will not work excepted.	[71 Fed. 310; 33 U. S. App. 330]	18: 49
Meaning of "weather working day."	[49 Fed. 76; 2 U. S. App. 83]	1: 174
Days when bay men by custom stop work included in running of lay days.	[87 Fed. 1007; 59 U. S. App. 202]	31: 358
Liability for demurrage during strike when "strikes" excepted from running of lay days.	[87 Fed. 1005; 59 U. S. App. 211]	31: 347
Meaning of term "strike" in exceptions as to running of lay days.	[87 Fed. 1007; 59 U. S. App. 202]	31: 358
Days lost in putting up vessel's gear included in running of lay days.		Id.
For loading lumber computed on amount actually loaded, not on amount delivered to vessel for loading.	[98 Fed. 316]	39: 97

VIII. LIABILITY FOR TORTS; INJURIES TO PASSENGERS.

For injuries to seamen and stevedores, see SEAMEN.

See also *infra*, X.

What is negligence "in management of the vessel."	[82 Fed. 471; 51 U. S. App. 467]	27: 326
Liability of vessel for injury for which owner not accountable.	[67 Fed. 347; 35 U. S. App. 201]	14: 530
Of owner, for detaining persons on board and requiring involuntary service.	[76 Fed. 376; 46 U. S. App. 245]	22: 239
Negligence in leaving lighter exposed to swells without watchman.	[57 Fed. 311; 14 U. S. App. 496]	6: 346
Failure to inspect repaired boiler, injury to passenger.	[75 Fed. 312; 44 U. S. App. 591]	21: 366
Wet place on floor, steward slipping and spilling hot gruel on passenger.	[83 Fed. 847; 51 U. S. App. 608]	27: 650
Assault on passenger during transportation from dock to ship.	[88 Fed. 197; 59 U. S. App. 574]	31: 452
Liability for negligence of pilot.	[78 Fed. 497; 42 U. S. App. 303]	24: 182.

IX. GENERAL AVERAGE.

See also Note, 20: 357

Maritime Liens for, see MARITIME LIENS.

Liability for, of owners of cargo, on implied promise.

[76 Fed. 573; 33 U. S. App. 610]

Effect of exemption from liability for damage to cargo by fire.

[59 Fed. 161; 18 U. S. App. 407]

As between vessel and underwriters.

Id.

State statutes as to method of ascertaining proportions of.

[79 Fed. 368; 48 U. S. App. 245]

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**SHIPPING—continued.**

- Effect of small deficiency in coal supply to exempt cargo from.  
[81 Fed. 208; 51 U. S. App. 280] 26: 535
- Specie sent back to port of shipment after stranding and before salvage operations begin not liable to contribute to salvage expenses.  
[74 Fed. 564; 45 U. S. App. 1] 20: 349
- Right of contribution between cargo owners, although vessel creates danger to avert which sacrifice made. Id.
- Enforcement of, necessity of prior discharge of cargo.  
[76 Fed. 573; 33 U. S. App. 610] 22: 318

**General average losses.**

- In case of vessel injured while receiving cargo at dock.  
[56 Fed. 520; 11 U. S. App. 648] 5: 640
- Inception of implied warranty of seaworthiness, effect of express warranty. Id.
- Proper case for, where stranded ship flooded to prevent total loss.  
[74 Fed. 564; 45 U. S. App. 1] 20: 349
- Voluntarily stranding vessel dragging her anchor and in danger of going ashore.  
[49 Fed. 252; 1 U. S. App. 39] 1: 236
- Recovery by cargo owner for negligent collision, average charges assessed against cargo.  
[65 Fed. 373; 22 U. S. App. 458] 13: 653
- Increased damage by smoke caused by turning steam onto fire in holes, as foundation for.  
[77 Fed. 317; 45 U. S. App. 227] 23: 183
- Damaged by water poured on cargo to extinguish fire.  
[59 Fed. 161; 18 U. S. App. 407] 8: 67
- Materials and cargo consumed before and after time adequate coal supply would have been exhausted.  
[81 Fed. 208; 51 U. S. App. 280] 26: 335
- Port of refuge expenses, vessel failing to take customary supply of coal. Id.
- Provision authorizing vessel to "Call at any port whatever," effect of. Id.
- Expense incurred by charterer in obtaining release of vessel seized as prize.  
[99 Fed. 451] 39: 595
- When machinery injured by second breakdown of shaft after temporary repair.  
[79 Fed. 107; 45 U. S. App. 736] 24: 461
- Exception as to dangers of seas and navigation.  
[56 Fed. 520; 11 U. S. App. 648] 5: 640
- Hidden danger rendering vessel unseaworthy. Id.

**Adjustment.**

- Charge, action for, not maintainable until adjustment.  
[79 Fed. 989; 26 U. S. App. 779] 25: 292
- Proceeds of ship paid to cargo owners in limited liability proceedings considered in general average adjustment.  
[74 Fed. 564; 45 U. S. App. 1] 20: 349
- Right of cargo owners to benefit of adjustment in general average, although claims filed in limited liability proceedings. Id.

**Bond.**

- Form and substance of, demanding improper bond.  
[76 Fed. 573; 33 U. S. App. 610] 22: 318
- Bond given by cargo owners, construction.  
[56 Fed. 520; 11 U. S. App. 648] 5: 640
- Liability on bond, when only for general average contribution. Id.
- Right to provision postponing any suit until end of litigation with consignees.  
[76 Fed. 573; 33 U. S. App. 610] 22: 318
- Cargo owner's bond, liability on. [73 Fed. 844; 39 U. S. App. 219] 20: 61
- Presumption that ship seaworthy in action on bond. Id.

**X. LIMITATION OF LIABILITY.**

See also *supra*, VI.; **Exceptions in bill of lading; ADMIRALTY.**

Act exempting from liability for loss from errors of navigation, not retroactive.  
[73 Fed. 239; 44 U. S. App. 434; 46 L. R. A. 204] 19: 481

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[68 Fed. 230; 35 U. S. App. 395] 15: 362

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[74 Fed. 899; 33 U. S. App. 510] 21: 162

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[71 Fed. 895; 38 U. S. App. 50] 18: 380

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- Right of, after sale complete. [60 Fed. 21; 8 U. S. App. 526] 8: 389
- Rights of purchaser from redemptioner, defective redemption. [59 Fed. 962; 8 U. S. App. 477] 8: 414
- By application to commissioner of state lands, to what lands applicable. [80 Fed. 592; 49 U. S. App. 289] 26: 13
- Bill in equity for, by one claiming undivided share, necessity of tender. *Id.*
- Attorney no right to use client's money to redeem from sale after client's death. [86 Fed. 393; 58 U. S. App. 559] 30: 128
- By insolvent corporation or its receiver, payment of interest and penalties necessary. [97 Fed. 719] 38: 388
- Only required to pay interest and penalties to redeem from irregular sale. *Id.*
- Mortgagee paying entire tax as owner, entitled on redemption only to amount in excess of taxes due on mortgage. [97 Fed. 696] 38: 365

**—Compelling levy to pay judgment or bonds.**

- Mandamus to compel levy to pay judgment against county.**  
[67 Fed. 202, 945; 32 U. S. App. 1, 402] 14: 421  
[75 Fed. 352; 41 U. S. App. 515] 21: 392  
[77 Fed. 567; 40 U. S. App. 583] 23: 286  
[77 Fed. 582; 40 U. S. App. 614] 23: 348  
[86 Fed. 264; 58 U. S. App. 579] 30: 30
- Judgment against town, when proceeding limitations. [51 Fed. 97; 4 U. S. App. 416] 2: 110
- Mandamus to compel levy, sufficiency of writ.**  
[61 Fed. 914; 22 U. S. App. 418] 10: 154
- Enforcement against police jury of consolidated divisions of parish. [60 Fed. 249; 23 U. S. App. 10] 8: 607
- Mandamus against drainage commissioners for failure to collect taxes.**  
[69 Fed. 867; 34 U. S. App. 169] 16: 530
- When city refuses to issue bonds. [78 Fed. 88; 41 U. S. App. 726] 23: 663
- Levy to pay judgment on county bonds, constitutionality of act requiring court to make. [85 Fed. 189; 54 U. S. App. 574] 29: 106
- Compelling levy to pay town bond. [78 Fed. 596; 42 U. S. App. 236] 24: 257
- Mandamus to compel levy to pay judgment against municipal corporation, see *Note*, 25: 475
- Compelling city to make additional levy to pay judgment for interest on bonds. [50 Fed. 147; 9 U. S. App. 10] 1: 499
- Whether levy confined to single year or covering number of years. [78 Fed. 88; 41 U. S. App. 726] 23: 663

**—Injunction against.**

- Injunction against levy of tax. [65 Fed. 151; 28 U. S. App. 313] 12: 525



**TAXATION—continued.**

- Necessity and sufficiency of tender of amount admitted.  
[67 Fed. 413; 32 U. S. App. 227] 14: 458
- For mere irregularity or illegality. [65 Fed. 856; 25 U. S. App. 144] 13: 177
- As illegal or excessive. [88 Fed. 350; 60 U. S. App. 166] 31: 537
- Of unauthorized assessment. [65 Fed. 151; 28 U. S. App. 313] 12: 525
- Of tax, which is only a personal charge.  
[70 Fed. 1; 36 U. S. App. 48] 16: 585
- Of tax on bank stock, assessed against bank instead of stockholders.  
[65 Fed. 856; 25 U. S. App. 144] 13: 177
- Enjoining collection of assessment on full value, where other property assessed for part only.  
[67 Fed. 411; 32 U. S. App. 224] 14: 456
- Enjoining overassessment of railroad stock employed in interstate commerce.  
[60 Fed. 37; 23 U. S. App. 180] 8: 490
- Enjoining collection of disputed taxes against railroad property in receiver's hands.  
[87 Fed. 789; 59 U. S. App. 69] 31: 321
- Equity jurisdiction to enjoin illegal assessment.  
[69 Fed. 546; 37 U. S. App. 378] 16: 305
- Federal jurisdiction of suit to enjoin enforcement.  
[88 Fed. 350; 60 U. S. App. 166] 31: 537
- Federal jurisdiction of suit to enjoin state officers from certifying tax. *Id.*
- Injunction by state court against collection of tax ordered by Federal court.  
[80 Fed. 686; 49 U. S. App. 376] 25: 469
- Certiorari not adequate remedy against enforcement of illegal tax.  
[88 Fed. 350; 60 U. S. App. 166] 31: 537

**—Recovery back of taxes paid.**

- Right to recover back tax paid on property listed by mistake.  
[90 Fed. 214; 61 U. S. App. 630] 32: 580
- Federal jurisdiction of action against state treasurer to recover taxes illegally collected.  
[87 Fed. 964; 59 U. S. App. 427] 31: 328

**Disposition of proceeds.**

- Interest on delinquent school taxes belongs to district.  
[91 Fed. 574; 63 U. S. App. 455] 34: 15
- Unconstitutionality of act making new disposition of surplus of tax.  
[75 Fed. 543; 41 U. S. App. 510] 21: 442

**Lien.**

- Lien on remainderman's interest extinguished by purchaser's foreclosure against life tenant only.  
[96 Fed. 657] 37: 552
- On personal property, paramount to lien of private party.  
[94 Fed. 244] 36: 214

**TEA.**

- Excluding importation of tea falling below standard of quality fixed by Secretary of Treasury.  
[96 Fed. 328] 37: 506

**TELEGRAPH OPERATOR.**

- As Fellow Servant, see MASTER AND SERVANT.

**TELEGRAPHS AND TELEPHONES.**

- Injury by Poles or Wires, see ELECTRICITY.
- Obstruction of navigation by submarine cable.  
[59 Fed. 365; 20 U. S. App. 247] 8: 152
- Liability for trimming trees.  
[61 Fed. 61; 23 U. S. App. 56] 9: 359
- Action to enforce rights of United States in telegraphic property and franchises.  
[59 Fed. 813; 19 U. S. App. 531] 8: 282
- Respective rights of contractor for erection of wires and purchaser of line at receiver's sale.  
[80 Fed. 961; 53 U. S. App. 319] 28: 342
- Oppressive restrictions on, by municipal corporations.  
[85 Fed. 19; 42 U. S. App. 686] 28: 659

**TELEGRAPHS AND TELEPHONES—continued.**

- Interfering with interstate commerce by restrictions upon foreign telegraph and telephone companies, see Note, 24: 23
- Acceptance of terms of local ordinance as bar to rights conferred by act of Congress. [85 Fed. 19; 42 U. S. App. 686] 28: 659
- Privileges conferred by act of Congress to be enjoyed in subordination to state police powers. Id.
- Duty to furnish service. [50 Fed. 677; 3 U. S. App. 30] 2: 1
- No exemption because instruments patented. Id.
- Subject to rules governing common carriers, equal facilities. Id.
- Excuse for telephone company discriminating between two telegraph companies. Id.
- Equal facilities to all connecting telegraph lines, application to Interstate Commerce Commission. [59 Fed. 813; 19 U. S. App. 531] 8: 282

**Acquisition of right of way.**

- Right to occupy railroad right of way with line. [90 Fed. 379; 61 U. S. App. 741] 33: 113
- Condemnation of easement of way for line over railroad right of way. Id.
- Contract for joint maintenance of line of poles on railroad right of way. [59 Fed. 813; 19 U. S. App. 531] 8: 282
- Assuring to telegraph company the exclusive right of way. Id.
- Right of railroad company to contract with successor of telegraph company named in act. Id.
- Right of Union Pacific railroad to contract for joint maintenance of line of poles on right of way. Id.
- Right to construct and maintain telephone line on United States post road. [85 Fed. 19; 42 U. S. App. 686] 28: 659

**Taxes.**

- Power to impose license tax on poles and wires. [89 Fed. 454; 60 U. S. App. 398] 32: 246
- Taxation of, as interference with interstate commerce, see Note, 8: 498
- State law imposing tax on, as interference with interstate commerce. [69 Fed. 546; 37 U. S. App. 378] 16: 305
- Assessment of property of, by state board. Id.
- Requiring assessors to look at the value of capital stock of, in assessing. Id.

**Messages—In general.**

- Damages for Delay, see DAMAGES.
- Contracts entered into by telegrams. [54 Fed. 639; 13 U. S. App. 30] 4: 533
- Evidence of gross negligence in transmission. [61 Fed. 624; 15 U. S. App. 445] 9: 680
- Liability for nondelivery of unrepeatd, obscure message. [68 Fed. 72; 32 U. S. App. 347] 15: 231
- Charging company with knowledge of importance of message, see Note, 11: 575
- Knowledge of purpose and importance of message, see Note, 15: 259
- Presumption as to character of transaction, order to sell stock. [48 Fed. 810; 2 U. S. App. 24] 1: 107
- Party whose message ordering levy of attachment delayed, not required to test validity of prior attachments obtained before suit. [66 Fed. 899; 29 U. S. App. 227] 14: 166
- Parol evidence of debtor's insolvency to show damages for delay of telegram ordering attachment proceedings. Id.
- Failure to disclose that telegraph line not in working order, see Note, 14: 177
- Liability for nontransmission of message received, when wires known to be down. [66 Fed. 899; 29 U. S. App. 227] 14: 166

**TELEGRAPHS AND TELEPHONES—continued.**

Evidence admissible that telegraph company with wires down transmitted messages by rival company. Id.

Damages for delay as affected by operator's familiarity with method of dealing on stock exchange. [48 Fed. 810; 2 U. S. App. 24] 1: 107

When but bare possibility that prompt delivery would have averted injury. [81 Fed. 676; 52 U. S. App. 290] 26: 564

Who entitled to sue, addressee of telegram.

[57 Fed. 471; 13 U. S. App. 317; 21 L. R. A. 706] 6: 432

Right of addressee of message to maintain action, see Note, 11: 576

Liability to stranger to company and telegram, for mistake in transmission. [79 Fed. 449; 49 U. S. App. 116; 38 L. R. A. 684] 25: 35

Decision of state court as to liability for delay in delivering message.

[57 Fed. 471; 13 U. S. App. 317; 21 L. R. A. 706] 6: 432

Duty of company to send out messengers to watch for arrival of addressee.

[81 Fed. 676; 52 U. S. App. 290] 26: 564

Delay in delivering telegram warning one that he was pursued by armed men as proximate cause of his death. Id.

Delay in delivering telegram as proximate cause of injuries resulting from surgical operation. [83 Fed. 992; 55 U. S. App. 211] 28: 56

**—Limiting liability.**

To sum paid for transmitting unrepeatd message.

[61 Fed. 624; 15 U. S. App. 445] 9: 680

To price of transmission, where company fails to disclose that wires down.

[66 Fed. 899; 29 U. S. App. 227] 14: 166

Relieving, by stipulation on message blank, from liability for nontransmission when wires down, of which fact sender ignorant. Id.

Decision of state court as to validity of.

[61 Fed. 624; 15 U. S. App. 445] 9: 680

**TENANCY IN COMMON.**

Adverse possession, notice of. [52 Fed. 838; 8 U. S. App. 229] 3: 294

Conveyance as ouster of cotenants.

[70 Fed. 529; 37 U. S. App. 1, 199] 17: 251

Adverse possession of cotenant without actual notice of ouster. Id.

When rule that cotenants presumed to hold in cotenant's right applies. Id.

Evidence of conveyances to show adverse possession. Id.

Deed by a tenant in common conveying a specified quantity, effect of.

[82 Fed. 381; 53 U. S. App. 499; 40 L. R. A. 393] 27: 305

Of tract bordering on river. Id.

Redemption by one claiming undivided share from tax sale, necessity of tender.

[80 Fed. 592; 49 U. S. App. 289] 26: 13

Suit at law necessary before partition by cotenant out of possession.

[63 Fed. 865; 27 U. S. App. 417] 11: 463

Acceptance, by one of two owners in common, of offer to purchase, not binding.

[100 Fed. 224] 40: 341

**TENANT.**

See LANDLORD AND TENANT.

**TENDER.**

Power of appellate court over. [56 Fed. 300; 1 U. S. App. 312] 4: 4

Rejected offer to confess judgment, not basis of verdict for breach of contract not found to exist. [92 Fed. 290] 34: 351

**Sufficiency and effect—In general.**

Sufficiency of, by seller. [61 Fed. 280; 20 U. S. App. 589] 9: 504

Of certified bank check, instead of legal tender money.

[56 Fed. 281; 17 U. S. App. 48] 5: 505

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- Of money, and demand for reconveyance of land, when sufficient.  
[73 Fed. 335; 34 U. S. App. 642] 19: 508
- Sufficiency of, as to amount of tax admitted.  
[67 Fed. 413; 32 U. S. App. 227] 14: 458
- Of debt to pledgee, subsequent surrender of policy of insurance by latter.  
[60 Fed. 690; 20 U. S. App. 410] 9: 215
- Of royalties, effect to restore forfeited license.  
[59 Fed. 897; 17 U. S. App. 452] 8: 357
- Conditional, prejudicing appeal of party to whom made.  
[86 Fed. 16; 56 U. S. App. 437] 29: 538
- Made in bill, with offer to bring money into court if directed.  
[74 Fed. 52; 36 U. S. App. 720] 20: 291
- Effect of, on costs, see Note, 17: 379

**—To stop interest.**

- As affecting right to interest. [79 Fed. 368; 48 U. S. App. 245] 24: 644
- As affecting right to recover interest and cost.  
[52 Fed. 264; 8 U. S. App. 118; 17 L. R. A. 804] 3: 73
- Not necessary, in order to stop interest, that money be set aside.  
[74 Fed. 52; 36 U. S. App. 720] 20: 291
- To stop interest, necessity of keeping good.  
[86 Fed. 16; 56 U. S. App. 437] 29: 538
- At time and place of payment of notes stops interest.  
[74 Fed. 52; 36 U. S. App. 720] 20: 291

**Necessity—In general.**

- Of benefits received, as condition of action to cancel contract.  
[80 Fed. 172; 53 U. S. App. 30] 25: 357
- Of return of purchase money, as condition of cancellation of conveyance.  
[51 Fed. 338; 10 U. S. App. 1] 2: 252
- Necessity of, as condition of recovery by national bank of money paid for own stock.  
[84 Fed. 111; 53 U. S. App. 712] 28: 130
- As condition of redemption of land from tax sale.  
[80 Fed. 592; 49 U. S. App. 289] 26: 13
- Of taxes legally due as condition of enjoining issuance of tax deed to purchaser.  
[98 Fed. 10] 39: 34
- Of amount due on note, as condition precedent to setting up defense of unlawful sale of securities.  
[71 Fed. 102; 36 U. S. App. 248] 17: 627
- Of cash received under decree, as condition of setting aside.  
[60 Fed. 660; 23 U. S. App. 114] 9: 190
- Necessity of tendering unpaid insurance premium before bringing suit.  
[65 Fed. 765; 31 U. S. App. 163] 13: 284
- By insurance company, of premiums paid, before forfeiting policy for misrepresentation.  
[92 Fed. 503] 34: 506
- Of amount due from common debtor, to justify seizure under attachment.  
[51 Fed. 641; 7 U. S. App. 275] 2: 432

**—Waiver.**

- Of performance of contract, notice of intention not to comply.  
[83 Fed. 824; 48 U. S. App. 581] 28: 168
- Of performance, where other party to contract notifies of intention not to perform.  
[91 Fed. 345; 62 U. S. App. 520] 33: 550
- Before filing bill to redeem, when excused.  
[62 Fed. 503; 23 U. S. App. 451] 10: 516
- Of proper deed, by vendor, when waived.  
[83 Fed. 619; 54 U. S. App. 416] 27: 634

**TERMS.**

- Of Courts, see COURTS.

**TERRITORY.**

For Indian Territory, see **INDIAN TERRITORY**.

Jurisdiction of Courts in, see **COURTS**.

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Congress full legislative power over.

[86 Fed. 456; 57 U. S. App. 1] 30: 186

Power of Congress to regulate sale of liquors in.

Id.

Laws, requirement of submission to Congress, impeaching.

[56 Fed. 564; 15 U. S. App. 118] 6: 18

Validity of act authorizing organization of corporations to induce immigration to.

[97 Fed. 843] 38: 433

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Partnership for management of, what constitutes, breach.

[54 Fed. 439; 12 U. S. App. 193] 4: 425

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Drifting in harbor, subject of salvage.

[88 Fed. 91; 59 U. S. App. 186] 31: 395

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[90 Fed. 636; 62 U. S. App. 683] 33: 202

**TIME.**

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When of Essence, see **CONTRACTS**; **VENDOR AND PURCHASER**.

For Filing Assignments of Error, see **APPEAL AND ERROR**.

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For Presentation of Bill of Exceptions, see **APPEAL AND ERROR**.

For Removal of Cause to Federal Court, see **REMOVAL OF CAUSES**.

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For Taking Appeal, or Suing out Writ of Error, see **APPEAL AND ERROR**.

For Taking Depositions, see **DEPOSITIONS**.

For Taking Objections or Exceptions, see **APPEAL AND ERROR**.

Lapse of Time as Laches, see **EQUITY**.

Of Adverse Possession, see **ADVERSE POSSESSION**.

Computation of Work Days and Lay Days under Charter Party, see **SHIPPING**.

For Notice of Proofs of Loss, see **INSURANCE**.

What is reasonable time, question of law or fact.

[61 Fed. 379; 22 U. S. App. 164] 9: 530

Reasonable time, what is, how determined.

[75 Fed. 818; 45 U. S. App. 84] 21: 530

What is reasonable, preference of claims for railroad supplies.

[76 Fed. 492; 42 U. S. App. 145] 22: 289

**TIME—continued.**

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[59 Fed. 879; 21 U. S. App. 24] 8: 341

Dividing day into fraction in determining right to set-off.

[64 Fed. 832; 26 U. S. App. 386] 12: 430

**TITLE.**

Of Statute, see STATUTES.

When Passes, on Sale, see SALE.

Tax Title, see TAXATION.

Removal of Cloud from, see QUIETING TITLE.

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Acquisition of, by Adverse Possession, see ADVERSE POSSESSION.

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To real property, slander of; pleading; evidence.

[57 Fed. 333; 13 U. S. App. 399] 6: 358

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See INSURANCE.

**TORTS.**

See also ASSAULT AND BATTERY; CARRIERS; COLLISION; DEATH; FALSE IMPRISONMENT; FRAUD; LIBEL AND SLANDER; MALICIOUS PROSECUTION; NEGLIGENCE; NUISANCE.

Liability of Municipality for Officers' Acts, see MUNICIPAL CORPORATIONS.

What Law Governs as to, see CONFLICT OF LAWS.

Lien for, see MARITIME LIENS.

Indemnity to injured person no defense to wrongdoer.

[72 Fed. 467; 36 U. S. App. 456] 18: 641

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Note, 12: 196

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Note, 14: 534

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Note, 39: 9

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Note, 21: 345

**TOWAGE.**

Collision of Tow with Other Vessel, see COLLISION.

Lien for, see MARITIME LIENS.

By foreign tugs, penalty, what are "foreign waters."

[50 Fed. 437; 7 U. S. App. 188] 1: 523

Part of towage unnecessarily done in British waters.

[50 Fed. 440; 7 U. S. App. 193] 1: 525

Liability of charterer of scows for injury to same by tug also chartered by him.

[49 Fed. 954; 1 U. S. App. 80] 1: 481

Tug justified in continuing attempts to reach schooner to tow it, notwithstanding obstruction by other tug.

[66 Fed. 362; 31 U. S. App. 317] 13: 512

**Negligence of tug—In general.**

No presumption of, from fact of injury to tow, burden upon tow to show.

[80 Fed. 153; 53 U. S. App. 189] 25: 318

Inference from breaking of tow as to grounding of bow.

[56 Fed. 312; 14 U. S. App. 410] 5: 514

Degree of care and skill required.

[87 Fed. 938; 59 U. S. App. 439] 31: 308

Bound to exercise reasonable care and skill, not a common carrier or insurer.

[80 Fed. 153; 53 U. S. App. 189] 25: 318

Contract of, not impose liability of common carrier.

[66 Fed. 571; 29 U. S. App. 482] 13: 641

Liability of tug for damage to tow in collision.

[50 Fed. 239; 1 U. S. App. 143] 1: 508

Liability of tug for personal injuries to master of tow.

[61 Fed. 516; 26 U. S. App. 11] 9: 600

Test of negligence, in running tow upon obstruction.

[57 Fed. 512; 14 U. S. App. 503] 6: 465

## TOWAGE—continued.

- Approaching too near dangerous rocks through pilot's mistake.  
[69 Fed. 741; 20 U. S. App. 701] 15: 696
- Tug going too far out of course, tow sheering and striking on submerged rocks.  
[49 Fed. 264; 1 U. S. App. 57] 1: 314
- Tug using ordinary care for tow's safety, not liable for sudden sheering of tow.  
[90 Fed. 1004] 40: 212
- Liability of tug for tow striking shoal not known to navigators.  
[99 Fed. 460] 39: 604
- Injury to tow by striking 'sunken rock not shown on charts or known to navigators.  
[93 Fed. 833] 35: 623
- Bringing tow in collision with dredge.  
[50 Fed. 239; 1 U. S. App. 143] 1: 508
- Liability of railroad for injury to tow in collision with drawbridge.  
[59 Fed. 192; 20 U. S. App. 136] 8: 86
- Permitting tow to strike against abutments of bridge pier from which protecting spiles lately removed.  
[63 Fed. 626; 24 U. S. App. 49] 11: 366
- Tow wrecked in narrow channel, held, accident due to tug's negligence.  
[61 Fed. 300; 17 U. S. App. 528] 9: 511
- In waiting outside breakwater for other tug.  
[63 Fed. 275; 22 U. S. App. 530] 11: 182
- Making short instead of long swing near breakwater, where barge straightens out before striking.  
Id.
- Neglect to use compass and lights, tug carried from course.  
[60 Fed. 452; 23 U. S. App. 265] 9: 66
- Tug not negligent in failing to use bridle to tow single canal boat.  
[99 Fed. 1004] 40: 212
- Loss of tow through failure of tug to go after her.  
[82 Fed. 685; 53 U. S. App. 525] 27: 526
- Excessive speed in towing schooner.  
[87 Fed. 938; 59 U. S. App. 439] 31: 308
- Duty as to ascertaining draught.  
[55 Fed. 426; 14 U. S. App. 124] 5: 169
- In dragging sunken vessel.  
[66 Fed. 71; 26 U. S. App. 486] 13: 331
- Weakness of tow preventing her being raised, effect on owner's right of recovery.  
[49 Fed. 464; 1 U. S. App. 57] 1: 314
- Burden of proof that tow not handled with usual degree of skill by tug.  
[99 Fed. 1004] 40: 212

## —During rough weather.

- Failure of master in emergency to do precisely what might have been best.  
[73 Fed. 255; 38 U. S. App. 602] 19: 496
- Nonliability of tug for putting to sea when justified by weather indications.  
Id.
- Putting to sea after storm abates in reliance on weather signals.  
[90 Fed. 510; 62 U. S. App. 418] 33: 620
- Failing to observe signals or obtain knowledge of weather bureau predictions.  
[95 Fed. 184] 37: 40
- Tug justified in refusing to take barges out to sea during unfavorable weather.  
[72 Fed. 537; 39 U. S. App. 151] 19: 6
- Tugs proceeding into open water in rough weather.  
[85 Fed. 983; 55 U. S. App. 354] 29: 519
- In undertaking trip, when sea rough and wind unfavorable.  
[74 Fed. 648; 45 U. S. App. 59] 20: 580
- Failure of tug to return during storm when return dangerous.  
[73 Fed. 255; 38 U. S. App. 602] 19: 496
- Failing to make harbor on meeting high wind, when no safe harbor at hand.  
[95 Fed. 184] 37: 40
- Attempting to tow schooner across bar in rough weather.  
[73 Fed. 239; 44 U. S. App. 434; 46 L. R. A. 264] 19: 481

**TOWAGE—continued.**

Failure to send tug ahead as scout in stormy weather. [95 Fed. 184] 37: 40

Failure to remove barges farther up bay before storm breaks.

[72 Fed. 537; 39 U. S. App. 151] 19: 6

Liability for mistake of judgment in selecting anchorage, after exercising reasonable skill. Id.

Temporarily leaving barges at ordinarily safe anchorage. Id.

Tug anchoring loaded tow in exposed place and leaving without watch.

[92 Fed. 406; 62 U. S. App. 314] 34: 419

**—In respect to tow line.**

Proper mode of fastening tow line. [87 Fed. 938; 59 U. S. App. 439] 31: 308

Duty of officers and crew of tow to see that tow line securely fastened. Id.

Tug not liable for accident to tow's mate from improper fastening of tow line. Id.

Insufficient strength of hawser not contributing to loss of tow.

[90 Fed. 510; 62 U. S. App. 418] 33: 620

Breaking of tow line when rounding to, to get away from shore, cause of.

[59 Fed. 169; 16 U. S. App. 356] 8: 72

Casting off line to prevent apparent destruction of tow on breakwater.

[63 Fed. 275; 22 U. S. App. 530] 11: 182

**Negligence of tow.**

Concurrent negligence of tug and tow in commencing voyage.

[56 Fed. 731; 13 U. S. App. 489] 6: 101

Tug's liability where tow's pilot guilty of contributory negligence.

[74 Fed. 642; 41 U. S. App. 80] 20: 574

**Abandonment of tow.**

When abandonment of barge by owner justified, tower's liability.

[49 Fed. 464; 1 U. S. App. 57] 1: 314

Right to salvage after.

[54 Fed. 197; 8 U. S. App. 316] 4: 281

Of schooner, when justified.

[50 Fed. 477; 1 U. S. App. 173] 1: 533

By crew, effect on towage contract. [56 Fed. 731; 13 U. S. App. 489] 6: 101

By crew, severance of legal relation. Id.

**Compensation.**

Construction of allegation in libel as to basis of settlement for.

[98 Fed. 635] 39: 196

Who liable for, owner or charterer.

[49 Fed. 166; 1 U. S. App. 3] 1: 218

Amount charged determined by actual tonnage under agreement for towage in accordance with schedule based on tonnage.

[98 Fed. 635] 39: 196

Allowance for extraordinary towage.

[55 Fed. 829; 3 U. S. App. 637] 5: 283

\$1,200 allowed for taking to wharf in heavy sea, government lightship broken loose.

[99 Fed. 570] 39: 653

**TOWNS.**

Railroad Aid Bonds, see RAILROADS.

Other Bonds of, see MUNICIPAL CORPORATIONS.

Voting at same time on raising money by tax to build and repair bridges and on borrowing money on bonds for same purpose. [99 Fed. 202] 39: 462

Not within inhibition against special act conferring corporate powers.

[59 Fed. 58; 19 U. S. App. 321] 7: 669

Unorganized county attached to other county as a *de facto* township.

[88 Fed. 749; 60 U. S. App. 38] 32: 101

Adverse possession of land as public park.

[51 Fed. 152; 4 U. S. App. 569] 2: 142

Service of process on trustee of township.

[51 Fed. 97; 4 U. S. App. 416] 2: 116

Mandamus to enforce judgment against. Id.



**TRADEMARKS AND TRADENAMES.****Right to; in what—In general.**

- What names subject to exclusive use as tradenames, see Note, 27: 357
- Word used for centuries in foreign country as name for article of food. [98 Fed. 872] 39: 321
- Must be designed to distinguish articles to which affixed, from similar articles. [91 Fed. 376; 62 U. S. App. 689] 33: 558
- In words or marks indicating simply superiority, popularity, or universal use of goods. [92 Fed. 357] 34: 405
- For species of grapevine. [71 Fed. 173; 39 U. S. App. 1; 31 L. R. A. 44] 17: 652
- Term "Matzoon," when correct transliteration of foreign word not claimable is, "madzoon." [98 Fed. 872] 39: 321
- Phrase "Syrup of Figs." [54 Fed. 175; 7 U. S. App. 588] 4: 264
- Term "Syrup of Figs," or "Fig Syrup," for laxative syrup. [73 Fed. 812; 43 U. S. App. 234; 33 L. R. A. 56] 20: 22
- Word "Kaiser" for brand of beer. [74 Fed. 222; 39 U. S. App. 229] 20: 402
- Word "Imperial" to designate quality of beer. [74 Fed. 229; 46 U. S. App. 18, 755] 20: 405
- Use of word "Imperial" as mark of origin or ownership not adopted. Id.
- Word "Instantaneous" for preparation of tapioca. [65 Fed. 505; 26 U. S. App. 496] 13: 25
- Word "Royal" for baking powder. [85 Fed. 231; 55 U. S. App. 575] 29: 245
- In letters or figures stamped on detachable parts of machines to distinguish them from each other. [91 Fed. 376; 62 U. S. App. 689] 33: 558
- Form of tobacco box as package for tobacco habit cure. [80 Fed. 105; 46 U. S. App. 709] 25: 314
- Right to benefit of use of name under which business conducted. [78 Fed. 472; 47 U. S. App. 250] 24: 173
- Use of name at another's instance, to whom right inures. [58 Fed. 888; 20 U. S. App. 166] 7: 567
- Right to, on patented article, not terminated by expiration of patent. [93 Fed. 660] 35: 532
- Arbitrary name of patented article after expiration of patent. [84 Fed. 955; 56 U. S. App. 7] 28: 581
- Validity of, use essential to. [92 Fed. 321; 53 U. S. App. 425] 27: 351
- Publicity and length of use necessary. [59 Fed. 572; 17 U. S. App. 352] 8: 215  
[59 Fed. 577; 17 U. S. App. 427] 8: 220
- Right to, defeated by short commercial use of name by other persons. [71 Fed. 173; 39 U. S. App. 1; 31 L. R. A. 44] 17: 652
- Transient use of previous to adoption by defendant. [58 Fed. 888; 20 U. S. App. 166] 7: 567

**—In geographical name.**

- Use of geographical name, see Notes, 17: 657; 35: 242
- Geographical name denoting place of origin. [71 Fed. 173; 39 U. S. App. 1; 31 L. R. A. 44] 17: 652
- Persons residing elsewhere no right to, after appropriation. [86 Fed. 608; 58 U. S. App. 490; 41 L. R. A. 162] 30: 386
- Word "Elgin" as applied to watches, though exclusively used for long time. [94 Fed. 667] 35: 237
- Word "Genesee" applied to salt manufactured in Genesee valley. [73 Fed. 818; 43 U. S. App. 243] 20: 27
- Right to name "Pocahontas" for coal mined in the "Great Pocahontas coal field." [87 Fed. 457, 468; 59 U. S. App. 35, 67] 31: 55
- "Columbia" cannot be appropriated. [86 Fed. 605; 58 U. S. App. 30] 30: 383

**TRADEMARKS AND TRADENAMES—continued.**

In name which has become distinctive appellation in locality where business pursued. [88 Fed. 642; 50 U. S. App. 394] 32: 77

Geographical name, what constitutes appropriation of market.

[61 Fed. 1008; 21 U. S. App. 394; 25 L. R. A. 190] 10: 227

**—Foreign trademark.**

Right to trademark under German treaty.

[59 Fed. 577; 17 U. S. App. 427] 8: 220

Treaty provision affecting right to trademark, not allowed by laws of other country.

[74 Fed. 222; 39 U. S. App. 229] 20: 402

Right of public to use foreign merchant's trademark, not abrogated by treaty.

[91 Fed. 536; 63 U. S. App. 139] 33: 291

Foreign manufacturer not deprived of relief against unlawful imitation because similar American preparation sold under nonimitative labels.

[74 Fed. 225; 26 U. S. App. 784; 45 U. S. App. 184] 20: 161

Degree of evidence required to show that owner of trademark in foreign country anticipated in American market.

[82 Fed. 321; 53 U. S. App. 425] 27: 351

Foreign merchant's right to act of sole vendees in claiming.

[91 Fed. 536; 63 U. S. App. 139] 33: 291

**Transfer of; abandonment.**

Contracts relating to use, see

Note, 14: 104

Property in, passes under assignment for creditors.

[93 Fed. 624; 46 L. R. A. 541] 35: 496

Registered trademark passing to assignee.

Id.

When passes, as incident of transfer of business and plant.

[57 Fed. 938; 17 U. S. App. 145] 6: 647

Assigning, in connection with transfer of goodwill of business.

[95 Fed. 457] 37: 146

Of registered trademark for brand of tobacco.

[93 Fed. 624; 46 L. R. A. 541] 35: 496

Agreement of cessation of right to use, on dissolution of firm.

[93 Fed. 660] 35: 532

Right of owner, on dissolution of firm licensed to use, to transfer right to use to purchaser of his interest in firm.

Id.

Relinquishment by firm to partner of right to use his trademark which firm had been licensed to use.

Id.

License to use, in firm business, trademark owned by one partner, not make partnership property.

Id.

Assignment of right to use a person's name, see

Note, 17: 588

Use of name after transfer of business and goodwill by originator.

[51 Fed. 941; 5 U. S. App. 112; 17 L. R. A. 354] 2: 555

Assignee chargeable with laches of assignor, see

Note, 22: 215

When use of seller's name not infringement of purchaser's right.

[79 Fed. 651; 45 U. S. App. 649] 25: 139

Abandonment of tradename and label by failure to protect rights in.

[91 Fed. 536; 63 U. S. App. 139] 33: 291

See also Note, 33: 294

**Registration.**

Contract between rival claimants fixing manner each shall use, not recordable.

[63 Fed. 438; 24 U. S. App. 162] 11: 277

Statement to obtain registration, effect as to evidence.

[59 Fed. 572; 17 U. S. App. 352] 8: 215

Effect of foreign decision granting right to register trademark.

[71 Fed. 167; 35 U. S. App. 750] 18: 24

Registration, effect as evidence.

[59 Fed. 572; 17 U. S. App. 352] 8: 215

[59 Fed. 577; 17 U. S. App. 427] 8: 220

## TRADEMARKS AND TRADENAMES—continued.

- Overcoming prima facie evidence of title from registry of trademark.  
[58 Fed. 888; 20 U. S. App. 166] 7: 567
- Transfer of registered trademark for brand of tobacco.  
[93 Fed. 624; 46 L. R. A. 541] 35: 496
- Not prevent passing to assignee in bankruptcy. 1d.

**Infringement; unfair competition—In general.**

- Injunction against Infringement, see INJUNCTION.
- Fraud, Laches, etc., Preventing Relief, see INJUNCTION.
- Test of infringement, generally. [80 Fed. 105; 46 U. S. App. 709] 25: 314
- Fraudulent intent unnecessary if infringement clear.  
[51 Fed. 941; 5 U. S. App. 112; 17 L. R. A. 354] 2: 555
- Intent to infringe no ground for relief, where similarity not sufficient to deceive.  
[89 Fed. 706; 61 U. S. App. 22] 32: 324
- Right to exclusive use of words descriptive of process, absence of deceit.  
[59 Fed. 909; 20 U. S. App. 701] 8: 362
- Deception, class of persons to be regarded.  
[77 Fed. 869; 45 U. S. App. 190] 23: 554
- Furnishing means of deceiving the public, although immediate purchasers not deceived.  
[79 Fed. 996; 45 U. S. App. 756] 25: 295
- Consumer as well as middleman to be considered in determining whether package calculated to deceive.  
[77 Fed. 869; 45 U. S. App. 190] 23: 554
- Selling goods under simulated brand to enable dealers to sell as other persons.  
[64 Fed. 841; 24 U. S. App. 395] 12: 432
- Label intended and calculated to deceive purchaser.  
[74 Fed. 225; 26 U. S. App. 784; 45 U. S. App. 184] 20: 161
- Absence of bad faith or imitative devices.  
[86 Fed. 605; 58 U. S. App. 30] 30: 383
- When similarity to warrant relief. [86 Fed. 956; 57 U. S. App. 565] 30: 496
- Similarity likely to impose on ordinary persons exercising care ordinarily used.  
[90 Fed. 814; 61 U. S. App. 454] 33: 280
- Sufficiency of care to guard public from confusing article manufactured with previous product to which tradename applied. [98 Fed. 872] 39: 321
- Duty of person entitled to use same name as another, as to preventing deception of purchaser. [97 Fed. 785] 38: 413
- Purchasers presumed to know when parties have equal right to use of same name. Id.
- Dissimilarities appearing on comparison, not test of.  
[91 Fed. 243; 63 U. S. App. 561] 33: 480
- Effect of dissimilarities putting purchasers exercising even slight care upon their guard. [80 Fed. 105; 46 U. S. App. 709] 25: 314
- Merely noting points of difference or similarity, insufficient.  
[86 Fed. 956; 57 U. S. App. 565] 30: 496
- Label on soap with different words and dissimilar characters.  
[92 Fed. 357] 34: 405
- Dissimilarity of wrappers and labels used on bottles of Castoria.  
[97 Fed. 785] 38: 413
- Imitating another's labels to appropriate the goodwill of his business.  
[78 Fed. 472; 47 U. S. App. 250] 24: 173
- Using capsule on wine bottle of same size and color, but without embossing.  
[91 Fed. 126; 62 U. S. App. 284] 33: 404
- Label with similar red triangle, but different in other respects.  
[95 Fed. 1006] 37: 355
- Use of imitative labels and devices in connection with inferior article.  
[78 Fed. 472; 47 U. S. App. 250] 24: 173
- Slight imitation attaching to most salient point.  
[64 Fed. 841; 24 U. S. App. 395] 12: 432

**TRADEMARKS AND TRADENAMES—continued.**

- Use of distinctive feature, slight resemblance in other respects.  
[82 Fed. 662; 53 U. S. App. 437] 27: 374
- What evidence of intentional imitation, in adopting new trademark.  
[74 Fed. 225; 26 U. S. App. 784; 45 U. S. App. 184] 20: 161
- Change from entirely different style of package to one resembling, not conclusive of infringement.  
[86 Fed. 956; 57 U. S. App. 565] 30: 496
- Fact that few isolated purchasers misled, not binding on court. Id.
- What constitutes infringement by corporations formed by assignors of right.  
[51 Fed. 941; 5 U. S. App. 112; 17 L. R. A. 354] 2: 555
- Unfair competition, see Notes, 17: 666; 20: 165; 30: 376; 35: 244
- Right of one abandoning trademark, to use after adopted by another.  
[85 Fed. 231; 55 U. S. App. 575] 29: 245
- Cardinal rule on subject of unfair competition. [92 Fed. 357] 34: 405
- Unfair competition resting on difference in price.  
[86 Fed. 956; 57 U. S. App. 565] 30: 496
- No exclusive or proprietary right necessary to prevent unfair competition.  
[86 Fed. 608; 58 U. S. App. 490; 41 L. R. A. 162] 30: 386
- Unfair competition in patent medicine, after expiration of patent.  
[91 Fed. 891; 62 U. S. App. 557] 34: 118  
[91 Fed. 901; 62 U. S. App. 576] 34: 127
- Publishing book on same subject as unfair competition.  
[86 Fed. 481; 57 U. S. App. 279] 30: 373
- Joinder of two or more persons in suit to prevent competition.  
[86 Fed. 608; 58 U. S. App. 490; 41 L. R. A. 162] 30: 386
- Sale or probable sale of other goods, sole basis of action for infringement.  
[89 Fed. 706; 61 U. S. App. 22] 32: 324
- Duty to establish prior right by use of trademark, when relied on as defense.  
[85 Fed. 231; 55 U. S. App. 575] 29: 245
- Considering injury under old label in suit for infringement after slight change.  
[86 Fed. 956; 57 U. S. App. 565] 30: 496
- Extent of relief granted in case of infringement.  
[58 Fed. 884; 18 U. S. App. 372] 7: 558
- Estoppel to represent that product of which tradename claimed a new article of manufacture.  
[98 Fed. 872] 39: 321

**—Specific instances.**

- Trademark "S. B." by use of firm initials "B. & S."  
[71 Fed. 161; 35 U. S. App. 837] 17: 573
- "Johann Hoff's" or "Hoff's" Extract, by "Hoff's Malt Extract."  
[76 Fed. 959; 45 U. S. App. 143] 22: 644
- "Stuart's Dyspepsia Tablets," by "Dr. Stewart's Dyspepsia Tablets."  
[91 Fed. 243; 63 U. S. App. 561] 33: 480
- Term "Improved Effervescent Carlsbad Powder," infringement of city's trademark on mineral salts.  
[71 Fed. 167; 35 U. S. App. 750] 18: 24
- "No-to-bac," by "Baco-Curo" used with a similar medicine.  
[80 Fed. 105; 46 U. S. App. 709] 25: 314
- "Syrup of Figs," by "Improved Fig Syrup," similar wrappers, etc.  
[54 Fed. 175; 7 U. S. App. 588] 4: 264
- "One Night Cure," cough remedy and corn remedy, by "Beeshore's One Night Cough Cure."  
[59 Fed. 572; 17 U. S. App. 352] 8: 215

**—Use of name, generally.**

- Use of corporate and firm names, see Notes, 17: 579; 27: 357
- Use of name, portrait, and fac simile of another to deceive public.  
[82 Fed. 321; 53 U. S. App. 425] 27: 351
- Transfer of business and goodwill by originator, subsequent use of name by rival.  
[51 Fed. 941; 5 U. S. App. 112; 17 L. R. A. 354] 2: 555
- Effect of patent to originator for an improvement. Id.

**TRADEMARKS AND TRADENAMES—continued.**

- When use of name of the seller of a manufacturer's business not an infringement of the purchaser's rights. [79 Fed. 651; 45 U. S. App. 649] 25: 139
- Use of corporate name with other symbols to deceive public. [74 Fed. 936; 45 U. S. App. 62] 21: 178
- Estoppel of corporation to deny that it uses name as successor of promoter. [51 Fed. 941; 5 U. S. App. 112; 17 L. R. A. 354] 2: 555
- Public acquiescence in use of tradename, not interrupted by other person's use of part of such name. [88 Fed. 642; 50 U. S. App. 394] 32: 77

**—Use of geographical name.**

- Imitative combination of geographical name with other words. [73 Fed. 818; 43 U. S. App. 243] 20: 27
- Sale under geographical name of inferior flour manufactured elsewhere. [86 Fed. 608; 58 U. S. App. 490; 41 L. R. A. 102] 30: 386
- Right to prevent improper use of name of city on flour manufactured elsewhere, by one whose mill without city. *Id.*
- City's right to prevent deceptive use of its name used by it as trademark. [71 Fed. 167; 35 U. S. App. 750] 18: 24

**—Use of own name.**

- Right to use own name in trade, qualified. [91 Fed. 243; 63 U. S. App. 561] 33: 480
- Right to use one's own name, see *Notes*, 17: 579; 27: 357
- Tricky, dishonest, and fraudulent use of man's own name to deceive public, enjoined. [70 Fed. 1017; 35 U. S. App. 843] 17: 576
- Using own name to sell goods as other person's. [64 Fed. 841; 24 U. S. App. 395] 12: 432
- Use of surname in same combination as that by which a rival's goods have become known. [80 Fed. 889; 51 U. S. App. 421] 26: 220
- Retiring partner using own name on patent medicine put up in wrappers and packages intended to deceive. [66 Fed. 544; 30 U. S. App. 35] 14: 101
- Duty of one entering into competition with another of same name to distinguish goods. [80 Fed. 889; 51 U. S. App. 421] 26: 220
- Adoption by corporation of employee's name for purpose of appropriating trade of another of same name. [78 Fed. 472; 47 U. S. App. 250] 24: 173

**Federal jurisdiction of suit.**

- Of action for infringement. [71 Fed. 161; 35 U. S. App. 837] 17: 573
- Of suit to enjoin use of invalid trademark. [94 Fed. 667] 35: 237
- Diverse citizenship necessary to give Federal courts jurisdiction of infringement suits. [90 Fed. 5; 62 U. S. App. 240] 32: 496

**List of words claimed as trademarks.**

- Anchor. [59 Fed. 577; 17 U. S. App. 427] 8: 220
- B. & S. [71 Fed. 161; 35 U. S. App. 837] 17: 573
- Baco-Curo. [80 Fed. 105; 46 U. S. App. 709] 25: 314
- Baker's chocolate. [80 Fed. 889; 51 U. S. App. 421] 26: 220
- Blackstone. [61 Fed. 1008; 21 U. S. App. 394] 10: 227
- Carlsbad Sprudel Salts. [71 Fed. 167; 35 U. S. App. 750] 18: 24
- Castoria. [84 Fed. 955; 56 U. S. App. 7] 28: 581  
[91 Fed. 891; 62 U. S. App. 557] 34: 118, 127  
[97 Fed. 785] 38: 413
- C. Benkert; C. Benkert & Son. [70 Fed. 613; 44 U. S. App. 99] 18: 549
- Chicorien Kaffee aus der fabrik von E. B. Muller & Co., in Roulers (Belgian). [74 Fed. 225; 26 U. S. App. 784] 20: 161
- Clark's Spool Cotton; Clark's Thread. [74 Fed. 936; 45 U. S. App. 62] 21: 178
- Clipper; Clipper Brand; Clipper City Brand. [93 Fed. 196] 35: 267
- Columbia. [86 Fed. 605; 58 U. S. App. 30] 30: 383

## TRADEMARKS AND TRADENAMES—continued.

Crushed Steel; Diamond Crushed Steel; Diamond Steel; Diamond Steel Abrasive.	[89 Fed. 706; 61 U. S. App. 22]	32: 324
Dr. Bull's Cough Syrup.	[58 Fed. 884; 18 U. S. App. 372]	7: 558
Dr. Stuart's Dyspepsia Tablets.	[91 Fed. 243; 63 U. S. App. 561]	33: 480
Duryea's Starch.	[79 Fed. 651; 45 U. S. App. 649]	25: 139
Elgin.	[94 Fed. 667]	35: 237
Empire Brewery Bottling Department.	[74 Fed. 229; 46 U. S. App. 18, 755]	20: 405
Everybody's Soap.	[92 Fed. 357]	34: 405
Every Day Soap.		Id.
Farthest North, Nansen.	[86 Fed. 481; 57 U. S. App. 279]	30: 373
Fermented Milk Food.	[98 Fed. 872]	39: 321
Fish Bros. Wagon Co.	[95 Fed. 457]	37: 146
Fram Expedition, The; Nansen in the Frozen World.	[86 Fed. 481; 57 U. S. App. 279]	30: 373
Garrett's Snuff.	[78 Fed. 472; 47 U. S. App. 250]	24: 173
Genesee Salt.	[73 Fed. 818; 43 U. S. App. 243]	20: 27
Gold Dust.	[77 Fed. 869; 45 U. S. App. 190]	23: 554
Green Mountain Grape.	[71 Fed. 173; 39 U. S. App. 1]	17: 652
Hoff's Malt Extract.	[76 Fed. 959; 45 U. S. App. 143]	22: 644
Host-Style Bitters.	[79 Fed. 996; 45 U. S. App. 756]	25: 295
Hunyadi Arpad; Hunyadi Janos; Hunyadi Matyas.	[91 Fed. 536; 63 U. S. App. 139]	33: 291
Hygeia.	[63 Fed. 438; 24 U. S. App. 162]	11: 277
	[63 Fed. 443; 24 U. S. App. 172]	11: 282
Imperial.	[74 Fed. 229; 46 U. S. App. 18, 755]	20: 405
Improved Effervescent Carlsbad Powder.	[71 Fed. 167; 35 U. S. App. 750]	18: 24
Instantaneous.	[65 Fed. 505; 26 U. S. App. 496]	13: 25
Johann Hoff's Malt Extract.	[76 Fed. 959; 45 U. S. App. 143]	22: 644
Kaiser Beer.	[74 Fed. 222; 39 U. S. App. 229]	20: 402
King Bee.	[93 Fed. 624]	35: 496
Kneipp Coffee; Kneipp Malt Coffee; Kneipp Malzkaffee.	[82 Fed. 321; 53 U. S. App. 425]	27: 351
La Venezolana.	[58 Fed. 888; 20 U. S. App. 166]	7: 567
Le Page's Glue.	[51 Fed. 941; 5 U. S. App. 112]	2: 555
M. A. Thedford's Liver Invigorator.	[66 Fed. 544; 30 U. S. App. 35]	14: 101
Matzoon.	[98 Fed. 872]	39: 321
Minneapolis Flour; Minnesota Flour.	[86 Fed. 608; 58 U. S. App. 490]	30: 386
New Label.	[97 Fed. 785]	38: 413
No-To-Bac.	[80 Fed. 105; 46 U. S. App. 709]	25: 314
One Night Cough Cure; One Night Cure.	[59 Fed. 572; 17 U. S. App. 352]	8: 215
Pettijohn's California Breakfast Food.	[76 Fed. 372; 46 U. S. App. 188]	22: 236
Pillsbury's Best.	[64 Fed. 841; 24 U. S. App. 395]	12: 432
Pocahontas; Pocahontas Flat Top.	[87 Fed. 457; 59 U. S. App. 35]	31: 55
	[88 Fed. 642; 50 U. S. App. 394]	32: 77
Prince's Metallic Paint.	[57 Fed. 938; 17 U. S. App. 145]	6: 647
Red Cross Plasters.	[82 Fed. 662; 53 U. S. App. 437]	27: 374
Rogers.	[70 Fed. 1019; 35 U. S. App. 848]	17: 575
Royal Baking Powder; Royal London Baking Powder.	[85 Fed. 231; 56 U. S. App. 7]	28: 581

**TRADEMARKS AND TRADENAMES—continued.**

R. W. Rogers Co.	[70 Fed. 1017; 35 U. S. App. 843]	17: 576
S. B.	[71 Fed. 161; 35 U. S. App. 837]	17: 573
Simmons Liver Medicine.	[66 Fed. 544; 30 U. S. App. 35]	14: 101
Steel Emery.	[89 Fed. 706; 61 U. S. App. 22]	32: 324
Stuart's Dyspepsia Tablets.	[91 Fed. 243; 63 U. S. App. 561]	33: 480
Syrup of Figs.	[54 Fed. 175; 7 U. S. App. 588]	4: 264
	[73 Fed. 812; 43 U. S. App. 234]	20: 22
Thompson's Glove Fitting Corsets.	[93 Fed. 660]	35: 532
True Smoke Package; Tuberosae Package.		
	[86 Fed. 956; 57 U. S. App. 565]	30: 496
Waukesha Hygeia Mineral Spring.		
	[63 Fed. 438; 24 U. S. App. 162]	11: 277
	[63 Fed. 443; 24 U. S. App. 172]	11: 282
W. H. Baker & Co.'s Chocolate.	[80 Fed. 889; 51 U. S. App. 421]	26: 220
Wm. A. Rogers.	[70 Fed. 1019; 35 U. S. App. 848]	17: 575
Wm. Rogers & Son; Wm. Rogers Mfg. Co.		
	[70 Fed. 1017; 35 U. S. App. 843]	17: 576

**TRANSCRIPT.**

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**TREATY.**

Jurisdiction of cases involving validity or construction of.	[53 Fed. 11; 7 U. S. App. 457]	3: 392
Effect of treaty on admiralty jurisdiction of suits between foreigners, see		
	Note, 37: 199	
Right to trademark under German treaty.		
	[59 Fed. 577; 17 U. S. App. 427]	8: 220
Effect of provision in, on right to trademark.		
	[74 Fed. 222; 39 U. S. App. 229]	20: 402
Right of public to use foreign merchant's trademark, not abrogated by.		
	[91 Fed. 536; 63 U. S. App. 139]	33: 291
With Great Britain, fixing boundary in straits in San Juan de Fuca, towage.		
	[50 Fed. 437; 7 U. S. App. 188]	1: 523
Of arbitration between United States and Great Britain; rights in Behring Sea; fur-bearing animals.	[75 Fed. 513; 44 U. S. App. 648]	21: 434
Award by arbitrators under, effect of.		Id.
Effect of nonratification of treaty with China on Chinese exclusion acts.		
	[50 Fed. 271; 7 U. S. App. 183]	1: 516
With Indians, reservation not revoked by.		
	[64 Fed. 417; 29 U. S. App. 59]	12: 205
Of New Echota, effect to make Indians citizens.		
	[83 Fed. 547; 42 U. S. App. 637]	27: 592

**TREES.**

Telephone company; trimming; liability.		
	[61 Fed. 61; 23 U. S. App. 56]	9: 359

**TRESPASS.**

Ejection of Trespassers from Train, see <b>CARRIERS.</b>		
Injury to Trespassers on Railroad Track, see <b>RAILROADS.</b>		
As to Mines, see <b>MINES AND MINERALS.</b>		
See also <b>DAMAGES.</b>		
Liability of corporation for, see		Note, 39: 15
By true owner, out of possession of land, against person in adverse possession, for injury to freehold.	[86 Fed. 269; 58 U. S. App. 552]	30: 35
Inference that trespass intentional where ordinary care to ascertain boundary line not used.	[93 Fed. 166]	35: 252
Dismantling disabled schooner for purpose of levying attachment while in condition to be repaired.	[100 Fed. 326]	40: 382

**TRESPASS—continued.**

Inadvertently taking ore from neighbor's land from neglect to ascertain true boundary line. Id.

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Against telephone company, for trimming trees. [61 Fed. 61; 23 U. S. App. 56] 9: 359

On land, by large number of persons, injunction against. [89 Fed. 769; 61 U. S. App. 13] 32: 470

Injunction against, requiring defendant to establish title by action at law. [58 Fed. 485; 8 U. S. App. 429] 7: 330

Preliminary injunction to maintain *status quo* until title determined at law. Id.

Failure of bill to set out chain of title. Id.

Sufficiency of averments as to title. Id.

Necessity of alleging that plaintiff was in possession at time of trespass. [80 Fed. 433; 49 U. S. App. 320] 25: 531

For recovery of mesne profits, complaint need not show relation of landlord and tenant. [76 Fed. 730; 40 U. S. App. 455] 22: 515

Title to land not adjudicated in action of. [86 Fed. 269; 58 U. S. App. 552] 30: 35

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**TRESPASS TO TRY TITLE.**

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**TRIAL.**

## I. CONDUCT AND DISPOSAL.

## II. QUESTIONS OF LAW AND OF FACT.

## III. SUBMITTING CASE TO, OR WITHDRAWING IT FROM, JURY.

## IV. SPECIAL INTERROGATORIES.

## V. INSTRUCTIONS.

## VI. FINDINGS BY COURT.

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## VIII. WAIVER AND CORRECTION OF ERRORS AND IRREGULARITIES.

See also APPEAL AND ERROR; COURTS; DEPOSITIONS; EVIDENCE; JUDGMENT; NEW TRIAL; PLEADING; WITNESSES.

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Selection and Number of Jury, see JURY.

View by Jury, see VIEW.

Place of, see VENUE.

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## I. CONDUCT AND DISPOSAL.

**In general.**

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Order of trial of issues in attachment, intervention. [54 Fed. 93; 10 U. S. App. 704] 4: 205

Form and substance of issues to be submitted to jury in ejectment. [80 Fed. 228; 42 U. S. App. 466] 25: 382

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Requiring government to elect between numerous counts of indictment. [87 Fed. 172; 58 U. S. App. 219] 30: 596

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**TRIAL**—continued.

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[57 Fed. 524; 14 U. S. App. 569] 6: 466

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[56 Fed. 143; 14 U. S. App. 439] 5: 451

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[79 Fed. 906; 51 U. S. App. 204] 25: 227

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[88 Fed. 627; 60 U. S. App. 225] 32: 64

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[78 Fed. 101; 46 U. S. App. 670] 23: 677

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[88 Fed. 627; 60 U. S. App. 225] 32: 64

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[97 Fed. 270] 38: 167

**Argument and conduct of counsel.**

Arguments of counsel, see

Note, 13: 589

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[69 Fed. 525; 32 U. S. App. 621] 16: 300

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[56 Fed. 994; 12 U. S. App. 520] 6: 211

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[84 Fed. 772; 52 U. S. App. 442] 28: 207

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[86 Fed. 865; 58 U. S. App. 201] 31: 70

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[63 Fed. 238; 26 U. S. App. 167; 26 L. R. A. 531] 11: 155

**Right to open and close.**

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[48 Fed. 152; 4 U. S. App. 32] 1: 56

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Offer to prove conversation without statement as to what conversation was.

[66 Fed. 880; 32 U. S. App. 93] 14: 246

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[74 Fed. 12; 36 U. S. App. 611] 20: 265

Admitting evidence of declarations of alleged coconspirators before showing defendant's connection.

[89 Fed. 954; 61 U. S. App. 169] 32: 449

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[76 Fed. 718; 40 U. S. App. 471] 22: 512

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[77 Fed. 138; 40 U. S. App. 382] 23: 89

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[72 Fed. 885; 38 U. S. App. 394] 19: 224

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[97 Fed. 882] 38: 528

Discretion as to permitting evidence in chief on rebuttal.

[51 Fed. 178; 4 U. S. App. 563] 2: 153

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[90 Fed. 463; 61 U. S. App. 470] 33: 607

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[83 Fed. 225; 49 U. S. App. 681] 28: 399

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[69 Fed. 768; 32 U. S. App. 640] 16: 395

**TRIAL—continued.**

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[94 Fed. 274] 36: 239

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[98 Fed. 251] 39: 56

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[51 Fed. 309; 10 U. S. App. 98] 2: 174

Testifying to new matters in rebuttal after close of defendant's case.

[87 Fed. 855; 58 U. S. App. 161] 31: 261

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[86 Fed. 877; 58 U. S. App. 184] 31: 31

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[80 Fed. 278; 53 U. S. App. 22] 25: 413

**Striking out evidence.**

Motion to strike out "all" testimony, too broad when part competent.

[93 Fed. 380] 35: 353

Motion to strike out evidence after tendency and effect disclosed, properly denied.

[74 Fed. 439; 43 U. S. App. 446] 20: 500

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[63 Fed. 379; 24 U. S. App. 1] 11: 248

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[86 Fed. 456; 57 U. S. App. 1] 30: 186

**II. QUESTIONS OF LAW AND OF FACT.****In general.**

Leaving question to jury in case of doubt.

[96 Fed. 699] 37: 557

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[61 Fed. 379; 22 U. S. App. 164] 9: 530

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Whether insured's death resulted from violation of law.

[76 Fed. 705; 44 U. S. App. 694] 22: 499

Whether death of insured caused by cut or spasms.

[65 Fed. 178; 27 U. S. App. 547; 27 L. R. A. 629] 12: 544

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[93 Fed. 621] 35: 493

Cause of accident causing death of insured, when dependent on oral testimony not wholly uncontradicted.

[92 Fed. 861; 63 U. S. App. 352] 35: 55

As to primary cause of injury.

[97 Fed. Rep. 423] 38: 239

Whether negligence the proximate cause of an injury, general rule.

[81 Fed. 679; 53 U. S. App. 381] 27: 367

Proximate cause of injury.

[100 Fed. 359] 40: 402

Proximate cause of injury and what directly contributed to it.

[69 Fed. 823; 32 U. S. App. 635] 16: 457

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[60 Fed. 987; 22 U. S. App. 136] 9: 308

Cause of engine footboard breaking.

[67 Fed. 569; 34 U. S. App. 1] 14: 547

Whether going between cars proximate cause of catching foot in unblocked frog.

[73 Fed. 642; 37 U. S. App. 654] 19: 631

Whether defective condition of track proximate cause of injury to brakeman.

[63 Fed. 527; 27 U. S. App. 316] 11: 332

Whether failure to maintain switch target proximate cause of injury.

[69 Fed. 823; 32 U. S. App. 635] 16: 457

Whether failure to stop engine absolutely at stopping post contributed to collision.

[51 Fed. 178; 4 U. S. App. 563] 2: 153

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- Whether employee injured through fellow servant's negligence.  
[70 Fed. 669; 44 U. S. App. 189] 17: 330
- Proximate cause of injury to boy grasping broken telegraph wire in contact with electric light wire.  
[64 Fed. 287; 28 U. S. App. 123] 12: 104
- Whether telegraph pole proximate cause of accident in slipping from stepping over.  
[73 Fed. 609; 43 U. S. App. 141] 19: 605
- Whether fire destroying elevator was caused by owner's negligence.  
[75 Fed. 953; 33 U. S. App. 567] 21: 575

**Character of persons.**

- Whether children trespassers on railroad track.  
[84 Fed. 596; 52 U. S. App. 433] 28: 494
- Whether passenger alighting at station still continued such while crossing intervening tracks.  
[99 Fed. 251] 40: 432
- Whether partnership relation existed in purchase of goods.  
[92 Fed. 858] 35: 52
- Whether boss and member of gang fellow servants.  
[64 Fed. 462; 29 U. S. App. 1] 12: 225

**Authority; ratification.**

- As to servant's authority to promise to repair machinery.  
[81 Fed. 269; 49 U. S. App. 453] 25: 397
- Authority of treasurer of corporation to make contract.  
[55 Fed. 812; 5 U. S. App. 26] 5: 276
- Ratification by use of purchase by agent acting for other party.  
[74 Fed. 681; 43 U. S. App. 383] 20: 662
- Whether transfer of corporate stock without transferee's consent ratified.  
[88 Fed. 207; 59 U. S. App. 555] 31: 477

**Contracts, generally.**

- Whether certain correspondence constitutes contract, proper construction.  
[52 Fed. 354; 10 U. S. App. 352] 3: 113
- Whether contract inferable from facts proved.  
[72 Fed. 244; 25 U. S. App. 669] 18: 533
- Construction of deed.  
[51 Fed. 932; 2 U. S. App. 310] 2: 546
- Inferences to be drawn from papers collaterally introduced in evidence.  
[87 Fed. 298; 59 U. S. App. 9] 30: 653
- Meaning of expression in negotiation "come in on the ground floor."  
[76 Fed. 108; 40 U. S. App. 188] 22: 83
- Acceptance of option to lease corporate stock by voting.  
[66 Fed. 467; 30 U. S. App. 244] 14: 253
- As to acceptance of delivery made after time stipulated in contract.  
[83 Fed. 116; 53 U. S. App. 604] 27: 410
- Whether architect exercised independent judgment as to performance of contract.  
[80 Fed. 705; 53 U. S. App. 257] 26: 100
- Whether employer contemplated that blasting necessary to excavation by contractor.  
[87 Fed. 298; 59 U. S. App. 9] 30: 653
- Modification of contract by new arrangement with corporate officers.  
[63 Fed. 916; 25 U. S. App. 89] 11: 496
- Unreasonable delay in rescinding contract.  
[53 Fed. 494; 3 U. S. App. 358] 3: 600
- As to revocation of guaranty as to future purchases.  
[85 Fed. 348; 56 U. S. App. 426] 29: 188
- Whether agreement outside mortgage; permitting mortgagor to continue selling mortgaged stock of goods.  
[100 Fed. 553] 40: 537

**Insurance matters.**

- Cause of Accident to, or Death of, Insured; see *supra*, Cause.
- Materiality and truth of insured's statement in application.  
[67 Fed. 460; 28 U. S. App. 393] 14: 474

**TRIAL**—continued.

- Materiality and good faith of answers in application for insurance policy.  
[92 Fed. 63; 63 U. S. App. 717] 34: 211
- Materiality of fact as to which false statement in application for insurance.  
[72 Fed. 413; 37 U. S. App. 692; 38 L. R. A. 33] 19: 286
- As to truth of insured's statement as to his occupation.  
[76 Fed. 705; 44 U. S. App. 694] 22: 499
- Acceptance of insurance policy. [65 Fed. 765; 31 U. S. App. 163] 13: 284
- Waiver of misstatement in application for fidelity insurance by failure to disclaim.  
[77 Fed. 117; 40 U. S. App. 710] 23: 65
- Whether insured knew of rule of company.  
[78 Fed. 754; 47 U. S. App. 260] 24: 305
- Whether insured knew danger from heating bucket of tar pitch in tank.  
[87 Fed. 682; 59 U. S. App. 479] 31: 193
- Whether insured had any disease where no two of several physicians consulted agreed on disease.  
[100 Fed. 719] 40: 665
- Whether interruption by insured of journey through prohibited territory improper.  
[93 Fed. 148; 60 U. S. App. 288] 35: 232
- Riding on platform of moving railroad car as voluntary exposure to unnecessary danger.  
[78 Fed. 754; 47 U. S. App. 260] 24: 305
- Whether manufacturing commenced or risk increased within insurance policy.  
[58 Fed. 166; 8 U. S. App. 451] 7: 144
- Whether employees engaged in tearing down old building for erection of new within terms of policy indemnifying against injury to employees on "general woodwork."  
[100 Fed. 604] 40: 614
- Whether demand by insurer for separate appraisal within reasonable time.  
[61 Fed. 379; 22 U. S. App. 164] 9: 530

**Matters about patents.**

- Whether invention in patent disclosed.  
[68 Fed. 351; 29 U. S. App. 629] 15: 476
- Whether device involves invention. [100 Fed. 465] 40: 496
- In action at law for infringement of patent, as to invention in patent.  
[53 Fed. 257; 7 U. S. App. 424] 3: 525
- Whether plaintiff first inventor. Id.
- Whether use of certain mechanical equivalents known at time of plaintiff's application. Id.
- Infringement of patent. [63 Fed. 611; 21 U. S. App. 428] 11: 355

**Fraud.**

- As to fraudulent intent of buyer of goods.  
[82 Fed. 799; 49 U. S. App. 596] 27: 171
- Fraudulent character of deed executed, pending attachment.  
[62 Fed. 259; 23 U. S. App. 494] 10: 370
- Validity of chattel mortgage, sale of mortgaged chattels.  
[60 Fed. 346; 19 U. S. App. 567] 8: 658
- Whether mortgagee participated in mortgagor's scheme to defraud creditor.  
[85 Fed. 417; 56 U. S. App. 355] 29: 239
- Preference of wife's claim, inferences for jury.  
[74 Fed. 698; 41 U. S. App. 301] 21: 273
- Diligence in discovering fraud inducing purchase of corporate stock.  
[74 Fed. 135; 40 U. S. App. 1; 33 L. R. A. 727] 20: 339

**Probable cause.**

- Probable cause for prosecution. [55 Fed. 217; 14 U. S. App. 297] 5: 77
- Whether probable cause for instituting criminal proceeding existed.  
[94 Fed. 52] 36: 75  
[94 Fed. 343] 36: 285
- Submitting question of probable cause to jury, when improper.  
[55 Fed. 217; 14 U. S. App. 297] 5: 77

**TRIAL**—continued.**Libel.**

Whether publication libelous, ambiguity.

[60 Fed. 592; 20 U. S. App. 417] 9: 147

Whether statement that corporate manager strangely disappearing, is living in luxury in Canada, libelous.

[63 Fed. 238; 26 U. S. App. 167; 26 L. R. A. 531] 11: 136

Whether exemplary damages allowable for publishing libel.

[94 Fed. 762] 36: 475

**Assumption of risk.**

Assuming risk of obstructed condition of track.

[66 Fed. 931; 29 U. S. App. 529] 14: 199

Employee's assumption of risk of obviously dangerous machine where master continued its use with knowledge of defect.

[92 Fed. 572] 34: 550

**Negligence—In general.**

Cause of Death or Injury, see *supra*, **Cause**.

General rule.

[57 Fed. 915; 12 U. S. App. 688] 6: 636

[79 Fed. 744; 49 U. S. App. 260] 25: 190

Preliminary question for court, whether justifiably infer negligence.

[82 Fed. 979; 42 U. S. App. 567] 27: 287

Question of negligence for court only where all reasonable men must draw same conclusions from facts.

[100 Fed. 731] 40: 673

As to negligence and contributory negligence, general rule for determining whether for court or jury.

[76 Fed. 734; 40 U. S. App. 413] 22: 520

When dispute as to whether warning given in time to escape injury.

[97 Fed. 882] 38: 523

Negligence in leaving door of building in stockyards open at night.

[97 Fed. 881] 38: 523

Contributory negligence of shipper in falling through open door of building in stockyard at night.

*Id.*

Going to sleep on boat moored near point where blasting done.

[100 Fed. 244] 40: 366

As to contributory negligence of pedestrian injured by inequality in sidewalk.

[75 Fed. 373; 41 U. S. App. 498] 21: 402

Contributory negligence in stumbling over obstruction in unlighted hall.

[63 Fed. 942; 24 U. S. App. 176] 11: 521

Contributory negligence of children, see

Note, 37: 365

Negligence in permitting telegraph wire to break.

[64 Fed. 287; 28 U. S. App. 123] 12: 104

Negligence in running elevator after being warned to stop it.

[68 Fed. 858; 30 U. S. App. 379] 16: 36

**—Injuries to employees, generally.**

Whether master should have provided particular safeguard against danger.

[74 Fed. 195; 34 U. S. App. 743] 20: 390

Whether master should have known of defective condition of boiler.

[80 Fed. 470; 51 U. S. App. 265] 25: 566

Negligence in failing to instruct as to use of machine.

[74 Fed. 608; 45 U. S. App. 45] 20: 555

Liability of master where question as to whether danger obvious or servant had been properly instructed.

[100 Fed. 45] 40: 270

Of master, in failing to warn servant as to formation of crusts in sausage machine hopper.

[96 Fed. 699] 37: 557

Sufficiency of care to protect at night guy ropes running across street securing derrick used.

[99 Fed. 679] 40: 69

Negligence and contributory negligence as to coupling of revolving shaft.

[69 Fed. 923; 36 U. S. App. 32] 16: 545

**TRIAL—continued.**

- Contributory negligence of employee, where boss gave no warning.  
[64 Fed. 462; 29 U. S. App. 1] 12: 225
- As to contributory negligence of servant in returning to work upon assurance of removal of incompetent fellow servant.  
[83 Fed. 989; 55 U. S. App. 221] 28: 250
- As to contributory negligence of servant in continuing in employment in reliance on master's promise.  
[84 Fed. 866; 55 U. S. App. 437] 28: 540
- Inexperienced servant going into place unnecessary to perform work.  
[90 Fed. 774; 63 U. S. App. 519] 33: 269

**—Injuries to railroad employees.**

- What constitutes most efficient mode of providing safe appliances to servant.  
[91 Fed. 223; 63 U. S. App. 550] 33: 466
- As to reasonableness and sufficiency of rules of railroad company.  
[84 Fed. 944; 56 U. S. App. 37] 28: 644
- Whether rule of railroad company for government of employees waived.  
[91 Fed. 224; 63 U. S. App. 553] 33: 468
- Whether railroad platform reasonably safe for employees.  
[79 Fed. 903; 51 U. S. App. 157] 25: 223
- Negligence in maintaining railroad bridge with low tie beams.  
[63 Fed. 530; 27 U. S. App. 313] 11: 335
- Negligence in managing special train following regular train.  
[67 Fed. 881; 29 U. S. App. 583] 15: 52
- Whether railroad company should have used some appliance to prevent derailment of train.  
[82 Fed. 979; 42 U. S. App. 567] 27: 287
- Whether railroad company kept track in reasonably safe condition.  
[63 Fed. 527; 27 U. S. App. 316] 11: 332
- Due care in inspecting grab iron on freight car.  
[94 Fed. 781] 37: 1
- Negligence of railroad company in furnishing car without sand box.  
[72 Fed. 458; 38 U. S. App. 334, 340] 18: 632
- Negligence in attempting to step from one car to another.  
[66 Fed. 931; 29 U. S. App. 529] 14: 199
- Attempting to cross railroad track with bucket of mortar at place where track obstructed where train running at excessive speed.  
[100 Fed. 731] 40: 673
- Contributory negligence in standing near track at work without constantly looking for train.  
[74 Fed. 460; 38 U. S. App. 659] 20: 593
- Contributory negligence in standing on top of car while crossing bridge.  
[63 Fed. 530; 27 U. S. App. 313] 11: 335
- As to switchman's knowledge or negligence in failing to learn of improper manner in which cars loaded.  
[85 Fed. 608; 56 U. S. App. 505] 29: 374
- Contributory negligence of engineer in running train without flagman.  
[79 Fed. 934; 51 U. S. App. 111] 25: 247

**—Injuries to passengers.**

- Negligence in delaying transportation of live stock.  
[66 Fed. 868; 32 U. S. App. 60] 14: 153
- Whether interference necessary to assist passenger in boarding moving car, for jury.  
[60 Fed. 694; 20 U. S. App. 400] 9: 219
- Whether absence of guard rails from street car windows negligent, for jury.  
[60 Fed. 210; 13 U. S. App. 655] 8: 571
- Violently starting train after stopping at station.  
[92 Fed. 59; 63 U. S. App. 711] 34: 207
- Negligence of carrier in leaving outside vestibule door open.  
[76 Fed. 734; 40 U. S. App. 413] 22: 520
- Of carrier's negligence, where train breaks apart and parts collide.  
[67 Fed. 209; 28 U. S. App. 375] 14: 368
- Passenger injured by fall of defective door, negligence and contributory negligence.  
[80 Fed. 278; 53 U. S. App. 22] 25: 413

**TRIAL—continued.**

Contributory negligence of passenger misled by optical illusion, who walked through door. [76 Fed. 734; 40 U. S. App. 413] 22: 520

Whether passenger by open window in street car struck by post, negligent, for jury. [60 Fed. 210; 13 U. S. App. 655] 8: 571

Negligence and contributory negligence as to passenger alighting at station while crossing intervening tracks. [99 Fed. 251] 40: 432

As to contributory negligence of stockmen in leaving caboose. [76 Fed. 550; 41 U. S. App. 775] 22: 314

Contributory negligence of stockmen in riding upon top of car. [56 Fed. 451; 12 U. S. App. 392] 5: 551

[60 Fed. 379; 23 U. S. App. 37] 9: 29

Whether passenger justified in assuming that train will not be switched across only practicable path open without special warning. [88 Fed. 435; 60 U. S. App. 140] 32: 1

Intoxication of passenger not conclusive evidence of contributory negligence. [97 Fed. 891] 38: 536

**—At railroad crossing.**

As to duty of engineer to listen for approach of another train at crossing. [51 Fed. 178; 4 U. S. App. 563] 2: 153

As to right to stand cars on highway crossing. [59 Fed. 237; 19 U. S. App. 291; 23 L. R. A. 654] 8: 109

Whether ringing bell when pushing cars over crossing on dark night sufficient. [91 Fed. 860; 63 U. S. App. 758] 34: 114

Failure to maintain flagman or gates at much used railroad crossing. [92 Fed. 310] 34: 1

Contributory negligence. [55 Fed. 940; 12 U. S. App. 254] 5: 338

[59 Fed. 860; 19 U. S. App. 346] 8: 322

Contributory negligence, when dependent on question whether place of accident public railroad crossing. [91 Fed. 860; 63 U. S. App. 758] 34: 114

Whether use of crossing justifies presence of person on track. [74 Fed. 285; 46 U. S. App. 85] 20: 184

Contributory negligence of insured in crossing track in front of train. [74 Fed. 457; 45 U. S. App. 39] 20: 588

Contributory negligence of ten-year-old boy, failing to look or listen for train before crossing track. [95 Fed. 370] 37: 106

As to contributory negligence of driver's guest in failing to look both ways for train at crossing. [79 Fed. 744; 49 U. S. App. 260] 25: 190

Driver's failure to look in direction from which train approached, for entire minute before driving on track. Id.

Failure to stop and listen for train between starting point and crossing. [77 Fed. 810; 40 U. S. App. 739] 23: 475

Negligence in failing to look for train until within 36 feet of track. [69 Fed. 86; 29 U. S. App. 664] 16: 151

Contributory negligence at railroad crossing where view obstructed. [64 Fed. 211; 24 U. S. App. 336] 12: 97

Contributory negligence in not stopping before driving on track, where view obstructed. [66 Fed. 496; 31 U. S. App. 306] 13: 602

Contributory negligence in driving on track immediately after train passed without looking for other train. [66 Fed. 502; 31 U. S. App. 366] 13: 608

Contributory negligence, crossing behind standing train. [59 Fed. 237; 19 U. S. App. 291; 23 L. R. A. 654] 8: 109

Negligence of person injured at railroad crossing during storm at night. [99 Fed. 529] 39: 642

Contributory negligence at railroad crossing, gates not lowered, failure to look and listen. [61 Fed. 375; 22 U. S. App. 129] 9: 526

Of boy fourteen years old, crossing railroad track diagonally while attracted by live engine on side track. [94 Fed. 294] 37: 359

**TRIAL—continued.****—On railroad track, generally.**

- Running trains in city limits. [91 Fed. 466; 63 U. S. App. 429] 33: 633
- Whether warnings given to person on track. [86 Fed. 240; 58 U. S. App. 526] 30: 6
- Negligence in not stopping train when child on track. [88 Fed. 116; 60 U. S. App. 156] 31: 414
- As to care exercised by ordinarily prudent person to stop train on seeing child on track. [94 Fed. 303] 36: 353
- Whether earlier effort to reduce speed of train or stop should have been made. [86 Fed. 240; 58 U. S. App. 526] 30: 6
- Contributory negligence in attempting to cross railroad bridge. [93 Fed. 384] 35: 357
- Contributory negligence of licensee unnecessarily walking on or near track. [59 Fed. 968; 8 U. S. App. 491] 8: 416

**Miscellaneous.**

- Question of damages for personal injuries. [97 Fed. 882] 38: 528
- Reasonableness of license fees against telegraph company. [89 Fed. 454; 60 U. S. App. 398] 32: 246
- As to intention to abandon one's residence and take up another. [80 Fed. 504; 49 U. S. App. 358] 25: 600
- Whether photograph original work of art or mere manual reproduction. [77 Fed. 966; 45 U. S. App. 449] 23: 594
- Whether publication libelous, ambiguity. [60 Fed. 392; 20 U. S. App. 417] 9: 147
- Boundary of land in ejectment suit. [69 Fed. 297; 25 U. S. App. 368] 16: 227
- Possession of one digging mining shaft, cutting timber and building fence and cabin. Id.
- Whether objection to accounts rendered monthly for more than two years, reasonable. [86 Fed. 574; 57 U. S. App. 546] 30: 260
- Determination for court, as to presentation and disallowance of claim. [73 Fed. 800; 36 U. S. App. 645] 20: 11
- Whether ship sailed within time fixed by contract for purchase of cargo. [86 Fed. 55; 57 U. S. App. 236] 29: 621
- Whether schooner dismantled for the purpose of levying attachment, could have been repaired at reasonable cost. [100 Fed. 326] 40: 382
- Whether 12-inch artesian well has a bore or a flow of 12 inches. [63 Fed. 916; 25 U. S. App. 89] 11: 496
- Whether child five years old can render service of pecuniary value. [59 Fed. 417; 20 U. S. App. 225] 8: 169
- Whether deceased suffered mental or bodily pain. [61 Fed. 392; 22 U. S. App. 187] 9: 646
- Whether copyright notice on photograph sufficiently legible. [77 Fed. 966; 45 U. S. App. 449] 23: 594

**III. SUBMITTING CASE TO, OR WITHDRAWING IT FROM JURY.****In general.**

- No right to demand submission of particular questions of fact. [91 Fed. 858] 34: 112
- Submitting case only when substantial evidence to support contention of party having burden of proof. [100 Fed. 197] 40: 325
- Submitting issue, although evidence uncontradicted where inconsistent with previous testimony. [97 Fed. 423] 38: 239
- Withdrawing case only when material facts admitted or undisputed, and only one conclusion inferable. Id.
- Case withdrawn only where no recovery possible on any view properly taken of facts in evidence. [100 Fed. 731] 40: 673



## TRIAL—continued.

- Withdrawing only when evidence free from conflict or clear and convincing.  
[88 Fed. 749; 60 U. S. App. 38] 32: 101
- Withdrawing when testimony not compel reasonable men to come to same conclusion.  
[87 Fed. 170; 58 U. S. App. 685] 32: 146
- When facts as to negligence undisputed and admit of but one reasonable inference.  
[82 Fed. 979; 42 U. S. App. 567] 27: 287
- Withdrawing when plaintiff's case made out by crediting his evidence and discrediting defendant's.  
[63 Fed. 527; 27 U. S. App. 316] 11: 332
- Withdrawing defense unsupported by evidence.  
[63 Fed. 48; 22 U. S. App. 439] 11: 96
- Bill dismissed when not supported by proof.  
[94 Fed. 897] 36: 536
- Whether contract completed where written negotiations supplemented by oral testimony.  
[94 Fed. 754] 36: 470
- Of question of improvements by defendant in ejectment.  
[70 Fed. 960; 30 U. S. App. 516] 17: 542
- When withdrawal of issue as to possession by plaintiff in ejectment improper.  
[51 Fed. 932; 2 U. S. App. 310] 2: 546
- Sufficiency of evidence of adverse possession.  
[70 Fed. 960; 30 U. S. App. 516] 17: 542
- Question whether loan was made to bank or directors individually.  
[82 Fed. 961; 48 U. S. App. 633] 27: 274
- Question as to existence of military expedition.  
[84 Fed. 799; 55 U. S. App. 479] 28: 612
- Question as to accused's knowledge of facts constituting military expedition. Id.
- Cause of accident.  
[86 Fed. 1; 52 U. S. App. 720] 29: 323
- Withdrawing all questions except that of damages for breach of agreement for lease where no other issue for jury.  
[100 Fed. 573] 40: 556
- Submission of issue as to transfer of claim to nonresident to enable suit to be brought in Federal court.  
[97 Fed. 1] 38: 17
- Question of corporation secretary's authority to make contract from previous transaction of business.  
[97 Fed. 843] 38: 433
- Charge made by physician for treatment of personal injuries, although reasonableness not proved.  
[97 Fed. 882] 38: 528
- Preliminary question whether jury can justifiably infer negligence from facts proved.  
[82 Fed. 979; 42 U. S. App. 567] 27: 287
- When evidence tends to show that defendant was negligent and plaintiff not.  
[86 Fed. 230; 56 U. S. App. 593] 29: 674
- As to giving of crossing signal by train.  
[84 Fed. 93; 54 U. S. App. 550] 29: 81
- Matters in regard to hose on station platform, tripping over which caused injury.  
[99 Fed. 911] 40: 174
- Negligence of railroad company in loading poles on car so that one projected beyond the others.  
[85 Fed. 608; 56 U. S. App. 505] 29: 374
- Sufficiency or fitness of rope used in loading piling on car.  
[98 Fed. 49] 38: 641
- Withdrawing question of negligence when risk assumed.  
[61 Fed. 635; 23 U. S. App. 310] 10: 1
- Liability for injury to servant, where evidence conflicting and appliances not reasonably safe.  
[92 Fed. 108] 34: 233
- Question as to whether place of work reasonably safe or rules reasonably proper.  
[100 Fed. 45] 40: 270
- Contributory negligence of employee where evidence as to his knowledge of defect conflicting.  
[92 Fed. 567] 34: 545
- Contributory negligence of newly employed servant in iron works not fully instructed as to danger from cars on track crossed by him.  
[100 Fed. 45] 40: 270

**TRIAL—continued.**

Whether switchman knew that switch lever extended above tie.

[82 Fed. 550; 53 U. S. App. 492] 27: 227

As to contributory negligence of driver at railroad crossing.

[83 Fed. 82; 48 U. S. App. 757] 27: 457

Withdrawing issue of contributory negligence of deaf man in approaching, without precaution, crossing where view obstructed.

[73 Fed. 76; 74 Fed. 362; 38 U. S. App. 573] 20: 447

Evidence requiring submission of question of horse's propensity to kick.

[80 Fed. 483; 51 U. S. App. 256] 25: 579

Submission to jury after charge that accident due to negligence of fellow servant.

[56 Fed. 1013; 12 U. S. App. 530] 6: 229

**Nonsuit.**

Directing compulsory nonsuit before defendant has rested his case.

[51 Fed. 562; 7 U. S. App. 359] 2: 380

Nonsuit proper judgment, on sustaining motion to exclude plaintiff's evidence.

[63 Fed. 379; 24 U. S. App. 1] 11: 248

Judgment of nonsuit reviewable.

[69 Fed. 297; 25 U. S. App. 368] 16: 227

**Directing verdict.**

General rule.

[54 Fed. 126; 12 U. S. App. 26] 4: 237

[58 Fed. 525; 19 U. S. App. 245] 7: 344

[77 Fed. 243; 42 U. S. App. 111] 23: 139

[78 Fed. 754; 47 U. S. App. 260] 24: 305

[83 Fed. 631; 49 U. S. App. 548] 28: 365

In general, see

Notes, 26: 531, 543

When Federal court may, generally.

[52 Fed. 777; 5 U. S. App. 179] 3: 280

General rule in negligence case.

[59 Fed. 968; 8 U. S. App. 491] 8: 416

Time of request.

[78 Fed. 754; 47 U. S. App. 260] 24: 305

Before defendant has rested his case.

[51 Fed. 562; 7 U. S. App. 359] 2: 380

Before receiving competent evidence offered on material issues.

[97 Fed. 462] 38: 278

What amounts to.

[79 Fed. 271; 52 U. S. App. 59] 24: 573

Request for charge that verdict must be for defendant, equivalent to.

[94 Fed. 73] 36: 94

Accepting stipulation for entry of dismissal to have same effect as direction of verdict.

[74 Fed. 285; 46 U. S. App. 85] 20: 184

When matter of judgment and discretion.

[86 Fed. 245; 57 U. S. App. 513] 30: 11

Where court would set aside verdict for plaintiff if rendered.

[74 Fed. 507; 42 U. S. App. 81] 20: 630

[76 Fed. 116; 40 U. S. App. 185] 22: 90

When truth so manifest that verdict to the contrary must be set aside.

[71 Fed. 460; 34 U. S. App. 432] 18: 193

For party clearly entitled to recover, where verdict to the contrary would be set aside.

[74 Fed. 155; 36 U. S. App. 682] 20: 366

Where court, after weighing evidence on motion for new trial, would set aside verdict for other party.

[74 Fed. 463; 43 U. S. App. 408] 20: 596

Where court satisfied that plaintiff not entitled to recover.

[94 Fed. 73] 36: 94

When clear that plaintiff cannot recover on any view of facts.

[89 Fed. 903; 61 U. S. App. 499] 32: 402

Duty to direct where no substantial evidence for other party.

[100 Fed. 373] 40: 416

Where no substantial evidence on which jury could properly render verdict for party producing.

[100 Fed. 368] 40: 411

## TRIAL—continued.

- Only where case palpably for party asking, after giving effect to every inference fairly or reasonably drawn from evidence. [100 Fed. 582] 40: 556
- Where evidence insufficient to warrant verdict for plaintiff.  
[79 Fed. 590; 50 U. S. App. 27] 25: 110  
[85 Fed. 133; 42 U. S. App. 748] 29: 50
- Where evidence with justifiable inferences insufficient to sustain verdict for plaintiff.  
[92 Fed. 553] 34: 530  
[93 Fed. 899] 35: 646
- Where facts uncontroverted and inference certain and undisputed.  
[86 Fed. 245; 57 U. S. App. 513] 30: 11
- When evidence adduced on which finding may reasonably be based.  
[76 Fed. 422; 39 U. S. App. 340] 22: 258
- Notwithstanding plaintiff's testimony, where shown by other evidence to be untrue.  
[86 Fed. 292; 52 U. S. App. 708; 40 L. R. A. 746] 30: 58
- Where inferences from circumstances exclusively for jury.  
[66 Fed. 922; 21 U. S. App. 682] 14: 190
- Where evidence leaves substantial ground for doubt on material question of fact.  
[90 Fed. 774; 63 U. S. App. 519] 33: 269
- When there is some evidence to support case of party having burden.  
[83 Fed. 437; 55 U. S. App. 113] 28: 358
- Where proof tends to support plaintiff's case.  
[69 Fed. 223; 30 U. S. App. 308] 16: 216
- When plaintiff's evidence standing alone would sustain a verdict in his favor.  
[82 Fed. 182; 54 U. S. App. 196] 26: 521
- When evidence on all material issues conflicting.  
[71 Fed. 95; 36 U. S. App. 264] 17: 620
- Properly refused, unless there is lack of evidence on some vital question.  
[82 Fed. 720; 54 U. S. App. 222] 27: 333
- For defendant, only when evidence and inferences insufficient to support verdict for plaintiff.  
[67 Fed. 277; 35 U. S. App. 208] 14: 394
- On testimony of party, when adversary requests submission to jury.  
[88 Fed. 207; 59 U. S. App. 555] 31: 477
- Taking view of evidence most favorable to party against whom direction asked.  
[74 Fed. 463; 43 U. S. App. 408] 20: 596
- Court must assume in deciding motion for, that all evidence true and all witnesses credible.  
[86 Fed. 245; 57 U. S. App. 513] 30: 11
- For defendants, part of plaintiff's claim sustained.  
[58 Fed. 151; 12 U. S. App. 697] 7: 129
- Questions of negligence and contributory negligence, see Note, 26: 539
- When contributory negligence established by uncontroverted facts.  
[57 Fed. 921; 12 U. S. App. 601] 6: 641  
[79 Fed. 744; 49 U. S. App. 260] 25: 190  
[89 Fed. 646; 60 U. S. App. 716] 32: 282
- For defendant, when deceased guilty of contributory negligence.  
[54 Fed. 301; 6 U. S. App. 381] 4: 346
- On question of master's negligence, when proper.  
[80 Fed. 865; 53 U. S. App. 291] 26: 201
- Where evidence conflicting in action for injury to street car passenger by collision.  
[74 Fed. 463; 43 U. S. App. 408] 20: 596
- On question as to cause of derailment of engine.  
[61 Fed. 747; 22 U. S. App. 372] 10: 35
- In action for injuries by derailment of train on logging road.  
[72 Fed. 739; 44 U. S. App. 347] 19: 168
- Question whether fire communicated from locomotive, conflicting evidence.  
[80 Fed. 993; 46 U. S. App. 701] 26: 296
- Existence of relation of carrier and passenger.  
[53 Fed. 997; 12 U. S. App. 115] 4: 146

## TRIAL—continued.

- On account, rendered for services by deceased president of corporation.  
[93 Fed. 617] 35: 489
- Upon question as to whether cause of death within exception in accident policy.  
[78 Fed. 285; 42 U. S. App. 253] 24: 92
- On question of payment. [60 Fed. 197; 13 U. S. App. 597] 8: 558
- On ground that contract sued on would not warrant recovery.  
[72 Fed. 227; 30 U. S. App. 749] 18: 519
- For defendant, in action to recover duties paid.  
[70 Fed. 776; 35 U. S. App. 741] 17: 361
- For plaintiff, in action on note, failure of consideration.  
[54 Fed. 848; 2 U. S. App. 568] 4: 609
- On assumption of invalidity of county warrants.  
[88 Fed. 749; 60 U. S. App. 38] 32: 101
- For insurance company on policy where evidence reconcilable with death by accident, though tending to support defense of suicide.  
[100 Fed. 582] 40: 556
- Where release has been procured from plaintiff by fraud.  
[66 Fed. 35; 27 U. S. App. 643] 13: 315
- In garnishment, motive in participation in fraudulent purpose.  
[54 Fed. 867; 6 U. S. App. 403] 4: 629
- Where evidence of redelivery of securities by bank to depositor conflicting.  
[97 Fed. 739] 38: 399
- Issue on plea of bar of foreign statute of limitation.  
[61 Fed. 738; 26 U. S. App. 85; 25 L. R. A. 470] 9: 587
- In malicious prosecution, refusal when proper.  
[55 Fed. 217; 14 U. S. App. 297] 5: 77
- Passing upon relative credibility of witnesses.  
[56 Fed. 20; 12 U. S. App. 240] 5: 410
- Effect of granting one party's request where both request direction.  
[70 Fed. 776; 35 U. S. App. 741] 17: 361  
[70 Fed. 778; 35 U. S. App. 744] 17: 363
- Refusal to direct, waived by subsequently introducing evidence.  
[52 Fed. 371; 10 U. S. App. 339] 3: 129  
[54 Fed. 468; 7 U. S. App. 626] 4: 441  
[63 Fed. 793; 24 U. S. App. 295] 11: 439  
[74 Fed. 463; 43 U. S. App. 408] 20: 596  
[86 Fed. 245; 57 U. S. App. 513] 30: 11
- Right to go to jury on question of fact, not waived by asking direction.  
[88 Fed. 207; 59 U. S. App. 555] 31: 477
- Requiring court to pass upon special questions of fact.  
[75 Fed. 350; 41 U. S. App. 491] 21: 390
- When court may direct juror to agree with his fellows.  
[58 Fed. 670; 19 U. S. App. 229] 7: 426

## IV. SPECIAL INTERROGATORIES.

- Submitting special questions to jury, following state statute.  
[58 Fed. 670; 19 U. S. App. 229] 7: 426
- Refusing obscurely worded special issue tendered, when fairly submitted in charge.  
[89 Fed. 819; 61 U. S. App. 506] 32: 355

## V. INSTRUCTIONS.

- Instructing jury on Sunday, see Note, 12: 462
- Requesting jury on Sunday to answer special questions in accordance with previous instructions. [64 Fed. 607; 29 U. S. App. 32] 12: 451
- Giving further instructions in explanation in open court in absence of counsel for both parties at time when their presence reasonably expected.  
[99 Fed. 907] 40: 171

**TRIAL—continued.**

Time to make requests for.	[93 Fed. 731]	35: 556
Oral requests during argument.	[86 Fed. 865; 58 U. S. App. 201]	31: 70
Duty as to reading prayers for.	[77 Fed. 126; 39 U. S. App. 451]	23: 77
Reducing to writing.	[49 Fed. 354; 4 U. S. App. 133]	1: 293
	[49 Fed. 358; 4 U. S. App. 200]	1: 297
	[50 Fed. 898; 4 U. S. App. 399]	2: 76
Reading opinion in another case.	[55 Fed. 323; 5 U. S. App. 258]	5: 116

**Necessity of request.**

Omission to instruct as to measure of damages, when no request made.	[67 Fed. 71; 30 U. S. App. 183]	14: 310
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**Sufficiency of request.**

Failure to distinguish clearly between original and modified requests.	[78 Fed. 450; 45 U. S. App. 330]	24: 163
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**Modifying instructions requested.**

Striking out superfluous words.	[52 Fed. 838; 8 U. S. App. 229]	3: 294
Substituting "find from the evidence" for "satisfied and convinced by the evidence."	[66 Fed. 400; 25 U. S. App. 214]	13: 579
As to adverse possession between cotenants.	[52 Fed. 838; 8 U. S. App. 229]	3: 294

**Repetitions.**

Needless repetitions.	[86 Fed. 240; 58 U. S. App. 526]	30: 6
Duty as to request, already covered.	[79 Fed. 934; 51 U. S. App. 111]	25: 247
Refusal of, when substantially covered.	[83 Fed. 64; 49 U. S. App. 592]	27: 439
Refusal of further instruction where charge fully presents case.	[97 Fed. 891]	38: 536
Refusal of instructions fully covered by general charge or instructions.	[69 Fed. 223; 30 U. S. App. 308]	16: 216
	[71 Fed. 93; 36 U. S. App. 229]	18: 114
	[71 Fed. 378; 30 U. S. App. 606]	18: 139
	[71 Fed. 843; 38 U. S. App. 37]	18: 332
	[72 Fed. 407; 36 U. S. App. 456]	18: 641

**Embodying law already given in general charge.**

	[49 Fed. 347; 4 U. S. App. 121]	1: 286
	[53 Fed. 65; 10 U. S. App. 439]	3: 433
	[61 Fed. 573; 15 U. S. App. 400]	9: 629

**Refusing instruction in language requested, where charge full and correct.**

	[70 Fed. 669; 44 U. S. App. 189]	17: 330
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**Special requests refused, where charge covers every aspect of case.**

	[94 Fed. 329]	36: 364
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**Not required to give special instruction covered by general charge.**

	[95 Fed. 370]	37: 106
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**Refusing more detailed special instruction covering same ground as general charge.**

	[88 Fed. 116; 60 U. S. App. 156]	31: 414
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**That no proof of publication at plaintiff's home.**

	[55 Fed. 240; 14 U. S. App. 173]	5: 91
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**As to other theories than plaintiff's as to cause of injury.**

	[66 Fed. 460; 25 U. S. App. 214]	13: 579
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**On issue of murder or suicide of insured.**

	[84 Fed. 410; 55 U. S. App. 200]	28: 231
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**Definitions.**

Defining "navigable waters."	[92 Fed. 344]	34: 392
Failure to define "ordinary care," "reasonable diligence," "negligence."	[75 Fed. 102; 44 U. S. App. 517]	21: 246

**On what matters necessary or proper—In general.****That plaintiff has made out prima facie case, when proper.**

	[72 Fed. 484; 38 U. S. App. 230]	18: 657
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## TRIAL—continued.

- On general principles of law, when special verdict returned.  
[71 Fed. 127; 36 U. S. App. 307] 18: 1
- To disregard expert evidence improperly admitted.  
[70 Fed. 21; 28 U. S. App. 569] 16: 601
- That issuance of patent creates presumption of patentable difference.  
[69 Fed. 148; 29 U. S. App. 715] 16: 185
- As to identity of goods fraudulently obtained with those transferred.  
[54 Fed. 867; 6 U. S. App. 403] 4: 629
- As to rescission of contract, justified by evidence.  
[63 Fed. 916; 25 U. S. App. 89] 11: 496
- As to other matters, after permitting plaintiff to reopen to show certain negligent act instead of directing verdict.  
[72 Fed. 458; 38 U. S. App. 334, 340] 18: 632
- That railroad company not required to fence.  
[49 Fed. 356; 4 U. S. App. 136] 1: 295
- As to care in employing fellow servants.  
[63 Fed. 407; 24 U. S. App. 103] 11: 260
- As to negligence of fellow servants.  
[77 Fed. 274; 33 U. S. App. 686] 23: 166
- As to having cars with drawheads of different heights.  
[71 Fed. 145; 30 U. S. App. 561] 18: 9
- As to assuming usual hazards of service.  
[63 Fed. 793; 24 U. S. App. 295] 11: 439
- That no recovery for injury to servant, if rule of employer voluntarily violated.  
[91 Fed. 224; 63 U. S. App. 553] 33: 468
- Instruction as to fellow servant selecting unsound piece for scaffold where contention that plaintiff hurt by own fault.  
[98 Fed. 56] 38: 647
- As to care required in entering street car.  
[71 Fed. 487; 34 U. S. App. 444] 18: 211
- That street cars have paramount right of way.  
[66 Fed. 915; 31 U. S. App. 374] 14: 183
- As to basis on which damages for death computed.  
[98 Fed. 49] 38: 641
- To give nominal damages only, for infringement of patent for which no market value shown.  
[74 Fed. 636; 41 U. S. App. 309] 20: 568
- That jury may find verdict for nominal damages in action for libel.  
[84 Fed. 758; 51 U. S. App. 689] 28: 522
- As to arithmetical calculation.  
[55 Fed. 240; 14 U. S. App. 173] 5: 91
- Issue of murder or suicide of insured, citing instances of accidental discharge of gun.  
[84 Fed. 410; 55 U. S. App. 200] 28: 281
- As to effect of withdrawal from quarrel of defendant charged with murder.  
[86 Fed. 106; 52 U. S. App. 647] 29: 600

## —Abstract.

- Based on general propositions.  
[86 Fed. 877; 58 U. S. App. 184] 31: 31
- On theory not supported in evidence.  
[97 Fed. 882] 38: 528
- Hypothesis not contended for.  
[54 Fed. 696; 12 U. S. App. 174] 4: 554
- Raising issue outside pleadings.  
[64 Fed. 462; 29 U. S. App. 1] 12: 225
- Authorizing recovery on ground not set out in declaration.  
[91 Fed. 223; 63 U. S. App. 550] 33: 466
- On issue not pleaded and impliedly excluded from jury's consideration, properly refused.  
[94 Fed. 30; 45 L. R. A. 822] 36: 56
- Submitting issue as to which there is no evidence to support a finding.  
[79 Fed. 934; 51 U. S. App. 111] 25: 247
- As to railroad employee's liability to discover person on track, in absence of evidence.  
[67 Fed. 277; 35 U. S. App. 208] 14: 394
- That no devices for concealment protect defendant, when no evidence of concealment.  
[87 Fed. 157; 57 U. S. App. 618] 30: 584

**TRIAL**—continued.

- In ejectment, as to time necessary to bar right of entry.  
[52 Fed. 838; 8 U. S. App. 229] 3: 294
- Conduct of press, publication by corporation or individual.  
[55 Fed. 240; 14 U. S. App. 173] 5: 91

**Upon evidence and facts**—In general.

- When jury left free. [49 Fed. 206; 4 U. S. App. 202] 1: 229
- When rules of law are properly stated.  
[52 Fed. 838; 8 U. S. App. 229] 3: 294  
[55 Fed. 932; 17 U. S. App. 22] 5: 326
- Instructions properly refused, when not fairly state testimony.  
[86 Fed. 865; 58 U. S. App. 201] 31: 70
- As to contributory negligence, based on incomplete statement of facts.  
[93 Fed. 737] 35: 562
- Charge withdrawing material evidence from jury's consideration.  
[88 Fed. 23; 59 U. S. App. 627] 31: 363
- Failure to present material fact with sufficient distinctness. Id.
- Comments by court on evidence, see Notes, 26: 530, 542
- As to comparative weight of positive and negative testimony.  
[79 Fed. 740; 49 U. S. App. 156] 25: 186
- That greater weight must be given to oral testimony than to statements in letters.  
[87 Fed. 637; 57 U. S. App. 18] 31: 172
- Calling attention to absence of contemporaneous evidence of debt, validity of conveyance as against creditors. [81 Fed. 157; 52 U. S. App. 246] 26: 323
- As to mode of determining preponderance.  
[61 Fed. 927; 18 U. S. App. 683] 10: 166
- Stating fact immaterial under the evidence.  
[62 Fed. 227; 8 U. S. App. 618] 10: 347
- Singling out particular items of evidence. [94 Fed. 329] 36: 364  
[97 Fed. 891] 38: 536
- Giving undue prominence to particular facts. [95 Fed. 370] 37: 106
- Prominently submitting evidence and theory of one party only.  
[88 Fed. 23; 59 U. S. App. 627] 31: 363
- That former owner pointing out boundary line and making deed in reference thereto, constitutes "strong evidence" of true boundary.  
[98 Fed. 556] 39: 160
- Characterizing evidence as "important," etc.  
[60 Fed. 98; 8 U. S. App. 503] 8: 500
- As to plaintiff's right to verdict if jury "reasonably satisfied" from evidence that allegations of complaint true. [100 Fed. 239] 40: 352
- Stating that certain facts claimed. [69 Fed. 581; 32 U. S. App. 548] 16: 339
- Stating that it was "claimed" that employee did not know of specified danger. Id.
- Commenting on inconsistent defenses.  
[66 Fed. 910; 29 U. S. App. 554] 14: 178
- That evidence of circumstances tending to show guilt, competent.  
[66 Fed. 286; 30 U. S. App. 101] 13: 442
- Action attacking title as fraudulent, mistake in charging that title on record vested in plaintiff. [75 Fed. 113; 41 U. S. App. 520] 21: 252
- As to presumption from behavior of deceased killed at railroad crossing.  
[84 Fed. 93; 54 U. S. App. 550] 29: 81
- As to broker claiming further commissions under oral agreement, producing greater weight of evidence. [93 Fed. 731] 35: 556
- That no evidence showing actual damage in libel case.  
[55 Fed. 240; 14 U. S. App. 173] 5: 91
- That libelous article read only by intimate friends, when evidence otherwise. Id.

**TRIAL—continued.**

- Statement that no conspiracy to defraud creditors.  
[54 Fed. 696; 12 U. S. App. 174] 4: 554
- Statement that if shaft guarded, accident would not have happened.  
[55 Fed. 932; 17 U. S. App. 22] 5: 326
- That fraud must be shown by satisfactory proof.  
[59 Fed. 70; 19 U. S. App. 307] 8: 1
- As to burden of showing fact proved without conflict.  
[83 Fed. 811; 51 U. S. App. 577; 40 L. R. A. 561] 28: 157

**—Assuming facts.**

- Improper.  
[87 Fed. 157; 57 U. S. App. 618] 30: 584
- Assuming state of facts to which no evidence applies.  
[71 Fed. 258; 36 U. S. App. 401] 18: 107  
[71 Fed. 93; 36 U. S. App. 229] 18: 114
- On assumed state of facts to which no evidence applies.  
[83 Fed. 631; 49 U. S. App. 548] 28: 365
- Assuming the existence of facts not shown by evidence.  
[62 Fed. 375; 18 U. S. App. 603] 10: 422
- Statement that general denial interposed, not an assumption that it is the only defense.  
[61 Fed. 927; 18 U. S. App. 683] 10: 166
- Request assuming, as matter of law, a question of fact.  
[76 Fed. 517; 46 U. S. App. 300] 22: 306
- Assuming fact relevant to question of contributory negligence.  
[60 Fed. 698; 18 U. S. App. 593] 9: 223.
- Assuming that place where plaintiff received injury was dangerous one.  
[76 Fed. 517; 46 U. S. App. 300] 22: 306
- Assuming that no change in contract when evidence of oral modification.  
[86 Fed. 359; 52 U. S. App. 603] 30: 103
- Assuming that firemen are promoted to engineers as matter of course.  
[63 Fed. 407; 24 U. S. App. 103] 11: 260
- Refusal of request that no effort made to protect hay destroyed by fire.  
[49 Fed. 807; 4 U. S. App. 247] 1: 441

**—Opinion of judge.**

- Judge expressing opinion on the facts, see Notes, 26: 528, 541
- Intimating opinion on question of fact.  
[82 Fed. 869; 50 U. S. App. 249] 27: 264
- As to weight of certain evidence. [92 Fed. 63; 63 U. S. App. 717] 34: 211
- As to weight and effect of evidence in criminal case.  
[84 Fed. 799; 55 U. S. App. 479] 28: 612
- Stating that evidence seems to prove certain facts.  
[62 Fed. 227; 8 U. S. App. 618] 10: 347
- As to what the evidence does or does not conduce to prove, leaving jury at full liberty to determine all issues of fact. [99 Fed. 907] 40: 171
- That certain expert testimony "entitled to great weight," mere expression of opinion. [66 Fed. 35; 27 U. S. App. 643] 13: 315
- On facts in charge when necessary to assist jury in reaching just conclusion.  
[98 Fed. 556] 39: 160
- As to effect of conditions in fine print in insurance policies.  
[72 Fed. 980; 44 U. S. App. 282] 19: 331
- Characterizing libelous publication as damaging.  
[55 Fed. 240; 14 U. S. App. 173] 5: 91

**As to credibility of witnesses.**

- Comments by court on witnesses, see Notes, 26: 530, 542
- As to credibility of witness successfully contradicted.  
[63 Fed. 407; 24 U. S. App. 103] 11: 260
- That jury may reject testimony of witness if satisfied that he has not testified to whole truth.  
[87 Fed. 125; 59 U. S. App. 318] 30: 572



**TRIAL—continued.**

- As to plaintiff's interest as witness. [85 Fed. 852; 57 U. S. App. 255] 29: 437
- Cautioning against party's testimony. [78 Fed. 450; 45 U. S. App. 330] 24: 163
- Characterizing witness as well-known and capable member of bar. [93 Fed. 731] 35: 556
- That white men and Indians entitled to same credit. [81 Fed. 694; 48 U. S. App. 376] 26: 570

**Correctness—In general.**

- Containing terms not so nicely chosen as to defy criticism. [91 Fed. 351; 62 U. S. App. 517] 33: 557
- Disconnected sentences correct when read with remainder of charge. [65 Fed. 901; 21 U. S. App. 634] 13: 197
- Expressions which apart from context might mean that improper questions submitted. [67 Fed. 881; 29 U. S. App. 583] 15: 52
- Absence of qualifying word or phrase in one paragraph. [70 Fed. 219; 36 U. S. App. 1] 17: 71
- Combining proper with improper requests. [54 Fed. 646; 13 U. S. App. 183; 21 L. R. A. 239] 4: 540
- Misstating argument of counsel, argumentative. [61 Fed. 592; 22 U. S. App. 187] 9: 646
- Sufficiency of, when necessary, supplemental evidence not supplied. [51 Fed. 884; 1 U. S. App. 201] 2: 535
- Necessity of covering correlative points or phrases. [61 Fed. 927; 18 U. S. App. 683] 10: 166
- Necessity of discriminating between functions of court and jury. [76 Fed. 127; 46 U. S. App. 214] 22: 101
- To correct an erroneous charge, requisites of. [81 Fed. 679; 53 U. S. App. 381] 27: 367
- That it is not clear exactly how counsel work out proposition as to amount due. [76 Fed. 108; 40 U. S. App. 188] 22: 83
- As to presumption of bank president's knowledge of condition of account, for which checks certified. [87 Fed. 701; 59 U. S. App. 663] 31: 202
- As to what constitutes insanity of insured committing suicide. [70 Fed. 954; 28 U. S. App. 612; 42 L. R. A. 583] 17: 537
- Word "false" held equivalent to "untrue." [66 Fed. 910; 29 U. S. App. 554] 14: 178
- Failure to state that fraud may be proved by circumstantial evidence. [50 Fed. 898; 4 U. S. App. 399] 2: 76
- As to necessity of grantee's participation in fraudulent purpose. [54 Fed. 867; 6 U. S. App. 403] 4: 629
- In action attacking title as fraudulent, purchase from fictitious person. [75 Fed. 113; 41 U. S. App. 520] 21: 252
- As to mode of locating disputed boundary line. [66 Fed. 883; 30 U. S. App. 50] 14: 158
- As to what constitutes adverse possession of land. [92 Fed. 949] 35: 100
- As to adverse possession under particular act, possession independently of act. [75 Fed. 347; 36 U. S. App. 629] 21: 387
- As to adverse possession, failure to state whether possession limited to particular land occupied. [80 Fed. 352; 42 U. S. App. 439] 25: 461
- As to arrest of passenger for purpose of ejecting him. [54 Fed. 468; 7 U. S. App. 626] 4: 441
- As to cause of destruction of insured bridge. [65 Fed. 628; 25 U. S. App. 190] 13: 53
- As to railroad company's liability for obstructing navigation by bridge. [74 Fed. 408; 40 U. S. App. 13] 20: 481
- As to effect of lack of notice of provision in contract. [63 Fed. 232; 25 U. S. App. 58] 11: 149

**TRIAL—continued.**

Construed, not to withdraw question of breach of contract from.  
[77 Fed. 949; 39 U. S. App. 483] 23: 586

Stating effect of consideration clause.

[62 Fed. 227; 8 U. S. App. 618] 10: 347

As to whether invention in patent. [67 Fed. 542; 29 U. S. App. 572] 14: 517

As to ground of attachment. [54 Fed. 93; 10 U. S. App. 704] 4: 205

That evidence of good character can be considered only when question of guilt in doubt.  
[97 Fed. 779] 38: 496

**—As to negligence.**

In defining contributory negligence. [74 Fed. 503; 41 U. S. App. 109] 20: 625

As to contributory negligence, use of "reckless" for "careless."

[49 Fed. 814; 4 U. S. App. 259] 1: 448

On questions of negligence and contributory negligence held unobjectionable.

[79 Fed. 268; 48 U. S. App. 298] 24: 570

Combining independent propositions on question of negligence.

[49 Fed. 209; 4 U. S. App. 109] 1: 231

Failure to explain which allegations of negligence must be established.

[76 Fed. 443; 46 U. S. App. 226] 22: 268

As to duty to avoid consequence of another's negligence.

[51 Fed. 935; 2 U. S. App. 272] 2: 549

As to defendant's duty to avoid consequence of plaintiff's negligence.

[76 Fed. 127; 46 U. S. App. 214] 22: 101

Referring to possible bearing of sex upon question of contributory negligence.

[79 Fed. 291; 49 U. S. App. 81] 24: 592

As to presence of slippery substance causing injury on wharf.

[74 Fed. 503; 41 U. S. App. 109] 20: 625

As to master's duty as to track used by it.

[66 Fed. 922; 21 U. S. App. 682] 14: 190

As to master's duty to furnish safe cars and track.

[67 Fed. 524; 30 U. S. App. 176; 31 L. R. A. 321] 14: 509

As to master's duty as to scaffold furnished.

[89 Fed. 677; 60 U. S. App. 661] 32: 309

Construed, not to withdraw fellow servant rule from jury.

[79 Fed. 263; 48 U. S. App. 331] 24: 564

Distinguishing between incompetency and negligence of fellow servants.

[100 Fed. 384] 40: 427

As to carelessness in employing or retaining incompetent fellow servant.

[64 Fed. 563; 29 U. S. App. 88] 12: 301

As to care required from injured employee.

[67 Fed. 659; 33 U. S. App. 147] 14: 609

Based on rules as to common carrier's liability in action against private carriers.  
[74 Fed. 517; 41 U. S. App. 45; 33 L. R. A. 255] 20: 515

Railroad company's care towards passengers on freight trains.

[67 Fed. 209; 28 U. S. App. 375] 14: 368

Instruction as to duty of carrier to reject insane passenger.

[54 Fed. 116; 10 U. S. App. 677] 4: 221

As to duty to protect from injury by insane fellow passenger.

Id.

Held, not to withdraw question of negligence as to depot platform and lights.

[82 Fed. 869; 50 U. S. App. 249] 27: 264

As to standing on caboose platform.

[67 Fed. 481; 32 U. S. App. 192] 14: 483

Requested, as to passenger's contributory negligence, conductor's warning "All aboard."  
[82 Fed. 869; 50 U. S. App. 249] 27: 264

As to blowing whistle on engine, effect of ordinance prohibiting.

[53 Fed. 219; 10 U. S. App. 473] 3: 506

**TRIAL—continued.**

- As to negligence of railroad employees in failing to avoid injury to one observed approaching crossing. [72 Fed. 152; 30 U. S. App. 698] 18: 496
- As to relative care of traveler and railroad company at highway crossing. [59 Fed. 860; 19 U. S. App. 346] 8: 322
- As to negligence of insured in crossing track in front of train. [74 Fed. 457; 45 U. S. App. 39] 20: 588
- As to frightening horse by ringing gong on street car. [61 Fed. 762; 17 U. S. App. 605] 10: 46
- As to duty of railway to keep right of way free from combustibles. [52 Fed. 711; 10 U. S. App. 375] 3: 264

**—As to assumption of risk.**

- By brakeman, held to ignore peculiar conditions. [82 Fed. 720; 54 U. S. App. 222] 27: 333

**—As to libel.**

- Leaving it to jury to determine which words are actionable. [78 Fed. 460; 46 U. S. App. 673] 24: 169
- That the law implies malice. [55 Fed. 240; 14 U. S. App. 173] 5: 91
- As to care required as to libelous articles from extent of circulation. [72 Fed. 443; 34 U. S. App. 607] 18: 628
- Stating that jury would likely consider publication an atrocious libel. [78 Fed. 769; 45 U. S. App. 636] 24: 329

**—As to damages.**

- For negligently causing death. [98 Fed. 49] 38: 641
- Withdrawing jury's discretion as to allowing interest. [49 Fed. 807; 4 U. S. App. 247] 1: 441
- As to amount allowed as damages. [71 Fed. 487; 34 U. S. App. 444] 18: 211
- As to recovery for prospective suffering and loss of time. [76 Fed. 517; 46 U. S. App. 300] 22: 306
- As to damages for carrying past station, not conjectural or hypothetical. [52 Fed. 94; 2 U. S. App. 342] 2: 633
- As to damages for wrongful expulsion from train, resistance, mitigation. [57 Fed. 822; 18 U. S. App. 279] 6: 597
- On question of damages for libel in charging mother with unchastity. [72 Fed. 443; 34 U. S. App. 607] 18: 628

**Misleading.**

- Single paragraph misleading, where meaning as whole plain. [98 Fed. 56] 38: 647
- Not misleading as a whole, although separate propositions subject to criticism. [83 Fed. 452; 52 U. S. App. 299] 27: 538
- Incomplete, aided by previous and subsequent explicit instructions. [61 Fed. 573; 15 U. S. App. 400] 9: 629
- Instruction not misleading, when meaning plain as applied to evidence, though susceptible of two meanings. [89 Fed. 819; 61 U. S. App. 506] 32: 355
- Calculated to mislead as to character of evidence necessary to prove issue. [88 Fed. 23; 59 U. S. App. 627] 31: 363
- Misleading in use of "plaintiff" instead of "deceased." [49 Fed. 538; 4 U. S. App. 221] 1: 354
- Confusing assumption of risks and amount of vigilance required. Id.
- As to question of trespassers on railroad, when not misleading. [53 Fed. 464; 10 U. S. App. 546] 3: 594
- As to superior rights of railroad company at railroad crossing. [67 Fed. 71; 30 U. S. App. 183] 14: 310
- Negating recovery for merely possible or probable future effects from injury. [49 Fed. 209; 4 U. S. App. 109] 1: 231
- As to liability for delay in transporting live stock. [66 Fed. 868; 32 U. S. App. 60] 14: 153

**TRIAL—continued.**

- Misleading as to when title to lumber passed.  
[86 Fed. 574; 57 U. S. App. 546] 30: 260
- Instruction as to effect of offer of compromise, where evidence of such offer introduced by defendant together with other evidence.  
[67 Fed. 542; 29 U. S. App. 572] 14: 517

**VI. FINDINGS BY COURT.**

- Manner of handing down findings. [79 Fed. 575; 49 U. S. App. 122] 25: 94
- Generality and effect of finding. Id.
- Sufficiency of, to support judgment. [60 Fed. 873; 13 U. S. App. 604] 9: 279
- Sufficiency in suit against United States.  
[88 Fed. 54; 59 U. S. App. 168] 31: 384  
[89 Fed. 940; 61 U. S. App. 263] 32: 441
- Sufficiency of description of tools, etc., lost.  
[60 Fed. 641; 23 U. S. App. 292] 9: 171
- Conclusive effect of, not dependent on character of proof.  
[71 Fed. 88; 36 U. S. App. 291] 17: 616
- Adoption of stipulation as to facts, which is statement of evidence and not of ultimate facts.  
[78 Fed. 101; 46 U. S. App. 670] 23: 677
- Agreed statement of evidential facts, not take place of finding on ultimate fact.  
[91 Fed. 511; 63 U. S. App. 37] 33: 658
- When statement a conclusion as distinguished from a finding of fact.  
[77 Fed. 821; 46 U. S. App. 653] 23: 483
- Effect of silence as to a particular fact. Id.
- Necessity as to separate statement of facts and conclusions of law.  
[48 Fed. 684; 1 U. S. App. 1] 1: 77  
[68 Fed. 433; 25 U. S. App. 267] 15: 507

**Special findings—In general.**

- Must contain every fact necessary to establish defense of release of surety.  
[92 Fed. 828] 35: 28
- Special finding should state ultimate, not evidential, facts.  
[94 Fed. 605] 36: 412
- Embodying legal inferences in special finding.  
[71 Fed. 88; 36 U. S. App. 291] 17: 616
- Special finding should state amount due on bonds.  
[73 Fed. 917; 34 U. S. App. 680] 20: 227
- A special finding not to be accompanied by general finding.  
[76 Fed. 208; 46 U. S. App. 260] 22: 128
- Special finding stating conclusion of law and general issue, not a general finding.  
[96 Fed. 729] 37: 574
- Decision in which facts specially found, mingled with statement of evidence and discussion of law, not special finding.  
[72 Fed. 294; 36 U. S. App. 534] 18: 570
- Statement of grounds of decision in opinion not equivalent to special findings.  
[69 Fed. 768; 32 U. S. App. 640] 16: 395

**—Necessity of.**

- Discretion as to making general or special findings.  
[79 Fed. 575; 49 U. S. App. 122] 25: 94
- Court may make either special or general findings, but not both.  
[96 Fed. 729] 37: 574
- Duty as to finding special issues of fact.  
[66 Fed. 440; 30 U. S. App. 140] 13: 572
- Special finding not required where jury waived. [94 Fed. 605] 36: 412

## TRIAL—continued.

## VII. VERDICT.

**In general.**

For Interest on Verdict, see **INTEREST.**

Defect in Pleading Cured by, see **PLEADING.**

Right to receive, on Sunday. [64 Fed. 667; 29 U. S. App. 32] 12: 451

Receiving verdict on Sunday, see Note, 12: 462

Receiving verdict against defendant in another action based on same transaction. [51 Fed. 178; 4 U. S. App. 563] 2: 153

Separate verdicts in consolidated action. [49 Fed. 343; 4 U. S. App. 115] 1: 282

State statute requiring juries to separately assess exemplary damages, not followed in Federal court. [94 Fed. 762] 36: 475

Basing finding as to intent with which false entries made in bank books on legitimate inferences from facts shown. [94 Fed. 127] 36: 105

Competency of jurors to impeach for mistake. [76 Fed. 479; 42, U. S. App. 123] 22: 283

Judgment for defendant *non obstante veredicto*. [58 Fed. 144; 19 U. S. App. 24] 7: 122

**Sealed verdict.**

Authorizing return of sealed verdict against defendant's objections. [79 Fed. 726; 48 U. S. App. 339] 25: 171

When court may order sealed verdict. [79 Fed. 263; 48 U. S. App. 331] 24: 564

**Sufficiency—In general.**

Failure to specify for which defendants rendered. [58 Fed. 609; 19 U. S. App. 215] 7: 386

Certainty, allowing interest "from judicial demand." [60 Fed. 210; 13 U. S. App. 655] 8: 571

"With interest," from what time computed. [77 Fed. 85; 40 U. S. App. 646] 23: 33

Sufficiency of description of mining claim in ejectment. [50 Fed. 888; 4 U. S. App. 290] 2: 67

**—Special verdict.**

Finding evidence, rather than ultimate facts. [77 Fed. 123; 40 U. S. App. 721] 23: 73

Effect of silence of, in respect to fact. [77 Fed. 713; 46 U. S. App. 591] 23: 420

Should respond to all issues made by pleadings, not to be accompanied by general verdict. Id.

That shot wound proximate cause of insured's death, authorizes recovery. [65 Fed. 178; 27 U. S. App. 547, 27 L. R. A. 629] 12: 544

Finding that bank money wrongfully taken by president, equivalent to finding of no authority to use drafts by which money obtained. [94 Fed. 30; 45 L. R. A. 822] 36: 56

Special finding that bank president not depositor, not nullified by other finding. [73 Fed. 925; 34 U. S. App. 688] 20: 230

Inconsistency between general verdict and special findings in negligence case. [66 Fed. 915; 31 U. S. App. 374] 14: 183

Special finding that bank president not depositor, not nullified by other finding. [94 Fed. 30; 45 L. R. A. 822] 36: 56

What considered in determining the force of. [77 Fed. 713; 46 U. S. App. 591] 23: 420

Following state statutes as to effect of findings by jury on special questions. [69 Fed. 302; 37 U. S. App. 266] 16: 232

In criminal case, amounting to acquittal. [94 Fed. 127] 36: 105

**TRIAL—continued.****—In criminal cases.**

- Sustained by one good count in indictment. [87 Fed. 172; 58 U. S. App. 219] 30: 596
- General verdict of guilty sustained if any one of consolidated indictments good and authorizes punishment imposed. [91 Fed. 494; 62 U. S. App. 550] 33: 652
- Of "guilty as charged" on trial of two indictments with numerous counts. [87 Fed. 446; 58 U. S. App. 243] 31: 44
- "Guilty as charged," without specifying counts, sufficient where jury find guilty on all counts. [87 Fed. 172; 58 U. S. App. 219] 30: 596
- On first trial, when special, amounting to acquittal. [94 Fed. 127] 36: 105

**Correcting; setting aside.**

- Equitable relief against mistake of foreman in announcing. [76 Fed. 479; 42 U. S. App. 123] 22: 283
- Laches in seeking such relief. Id.
- Court's power to correct, after jury's discharge. [85 Fed. 417; 56 U. S. App. 355] 29: 230
- Court's power to amend, to conform to statutory requirement. [93 Fed. 381] 35: 35
- On insurance policy, proceeding to correct, not affected by limitation. [76 Fed. 479; 42 U. S. App. 123] 22: 283
- Power to set aside, as against weight of evidence. [78 Fed. 576; 47 U. S. App. 402] 24: 321

**VIII. WAIVER AND CORRECTION OF ERRORS AND IRREGULARITIES.****In general.**

- Insufficiency of declaration, not cured by general finding for plaintiff by court where jury waived. [94 Fed. 65] 36: 88
- Amendments of certain counts of indictment cured by arrest of judgment on such counts. [87 Fed. 172; 58 U. S. App. 219] 30: 596
- In requiring plaintiff to elect between counts by going to trial on remaining count. [98 Fed. 274] 39: 79
- Refusing to compel plaintiff to elect between causes of action, by instructions eliminating all but one cause. [87 Fed. 157; 57 U. S. App. 618] 30: 584
- In mode of disposing of plea of former acquittal, by proceeding to trial. [94 Fed. 127] 36: 105
- Ruling that action not lie in form brought, by amending complaint. [87 Fed. 648; 59 U. S. App. 487] 31: 183
- Waiver as to remedy, by stipulation to submit an agreed statement of facts. [61 Fed. 491; 17 U. S. App. 502] 9: 582
- In overruling demurrer to evidence. [58 Fed. 144; 19 U. S. App. 24] 7: 122  
[67 Fed. 947; 32 U. S. App. 409] 15: 95
- Ambiguity in special issue submitted, by answer to second issue making meaning plain. [89 Fed. 819; 61 U. S. App. 506] 32: 355
- Submission of question of law to jury, requesting instruction requiring submission. [85 Fed. 417; 56 U. S. App. 355] 29: 239

**Evidence—In general.**

- Waiver of error in refusing to strike out plaintiff's evidence. [58 Fed. 945; 16 U. S. App. 290; 22 L. R. A. 620] 7: 581
- Sufficiency of evidence; waiver of objection to, by not asking peremptory instruction. [50 Fed. 689; 4 U. S. App. 324] 1: 616
- Failure to offer patent below and objection to its consideration on appeal, when desired by opposite party, waiver. [82 Fed. 432; 53 U. S. App. 478] 27: 204

**TRIAL—continued.****—Admission.**

Error in Admitting Evidence, Proved by Other Evidence, see **APPEAL**.

In admission of testimony, by failing to object to previous testimony of same character. [79 Fed. 896; 51 U. S. App. 81] 25: 216

In admitting evidence, by answering same.

[86 Fed. 697; 57 U. S. App. 187] 30: 343

Error in admission, cured by instruction.

[70 Fed. 364; 44 U. S. App. 58] 17: 161

Improper admission of evidence by finding of court.

[86 Fed. 272; 57 U. S. App. 593] 30: 38

**—Exclusion.**

As to facts conceded or otherwise substantially proved.

[70 Fed. 294; 36 U. S. App. 208] 17: 128

Excluding evidence of matter subsequently testified to by interested witness.

[87 Fed. 157; 57 U. S. App. 618] 30: 534

Refusal to permit inspection of memorandum where point sought to be proved fully established by other evidence.

[63 Fed. 530; 27 U. S. App. 313] 11: 335

Erroneous exclusion of release, not cured by suggesting incorporation of evidence as to its validity.

[63 Fed. 791; 27 U. S. App. 406] 11: 433

Error in excluding rules as to employee's riding on engine, cured by instruction.

[64 Fed. 563; 29 U. S. App. 88] 12: 301

**Instructions.**

Permitting exemplary damages, curing.

[57 Fed. 822; 18 U. S. App. 279] 6: 597

Misstatement of defendant's argument corrected by exception.

[74 Fed. 608; 45 U. S. App. 45] 20: 555

Instruction on state of facts unsupported by evidence, by requesting instruction on same state of facts.

[85 Fed. 408; 56 U. S. App. 416] 29: 230

Inconsistency between proper charge and erroneous instruction given at party's own request.

[30 Fed. 278; 53 U. S. App. 22] 25: 413

Of refusal of request to instruct, by presenting other requests.

[76 Fed. 443; 46 U. S. App. 226] 22: 268

Error in instruction not cured by other instruction.

[67 Fed. 451; 32 U. S. App. 134] 14: 464

Erroneous instruction, not cured by correct one.

[93 Fed. 166] 35: 252

Error in, harmless where correct instruction subsequently given.

[69 Fed. 823; 32 U. S. App. 635] 16: 457

Harmless, in view of other instructions and theory.

[56 Fed. 1001; 12 U. S. App. 482] 6: 217

Erroneous instructions as to amount of damages, rendered harmless by verdict.

[70 Fed. 364; 44 U. S. App. 58] 17: 161

Erroneous instruction as to appraisalment of insured property, cured by verdict.

[71 Fed. 120; 36 U. S. App. 327] 17: 645

Error in instructions, not ground for reversal where verdict special.

[71 Fed. 127; 36 U. S. App. 307] 18: 1

**Refusal of nonsuit, etc.**

Introducing evidence after overruling of motion to dismiss.

[84 Fed. 430; 51 U. S. App. 693] 28: 443

[85 Fed. 924; 58 U. S. App. 597] 29: 487

[93 Fed. 621] 35: 493

Of refusal to nonsuit, by introducing evidence.

[64 Fed. 287; 28 U. S. App. 123] 12: 104

[90 Fed. 709; 62 U. S. App. 429] 33: 251

[93 Fed. 377] 35: 350

Defendant examining witnesses, etc., after motion for nonsuit overruled.

[80 Fed. 638; 42 U. S. App. 514] 26: 45

**TRIAL**—continued.

By introducing evidence after refusal to direct verdict.

[52 Fed. 371; 10 U. S. App. 339] 3: 129

[54 Fed. 468; 7 U. S. App. 626] 4: 441

[63 Fed. 793; 24 U. S. App. 295] 11: 439

[74 Fed. 463; 43 U. S. App. 408] 20: 596

[86 Fed. 245; 57 U. S. App. 513] 30: 11

Of refusal to direct verdict, by proceeding with case.

[94 Fed. 73] 36: 94

**TROVER AND CONVERSION.**

Option to sue for conversion or to bring replevin, transfer of right.

[82 Fed. 148; 49 U. S. App. 498] 27: 87

Assumpsit against trespasser quarrying and converting stone.

[99 Fed. 683] 40: 72

Maintenance of action against assignee for creditors.

[82 Fed. 295; 53 U. S. App. 408] 27: 133

Sufficiency of evidence to show actual possession of certificates of stock at time of alleged conversion.

[80 Fed. 500; 39 U. S. App. 619] 25: 596

Obtaining judgment for conversion against pledgee not prevent pledgeor's retaining securities wrongfully repledged by pledgee.

[86 Fed. 1023; 57 U. S. App. 225] 30: 503

Right to maintain in one state, action to recover value of stone quarried from other state and removed into, and converted in, former state.

[99 Fed. 683] 40: 72

Waiver of right in logs converted, by accepting bond in lieu of same.

[78 Fed. 319; 49 U. S. App. 24] 24: 101

**Who may maintain.**

Beneficiaries under agreement to hold stock in trust.

[75 Fed. 62; 41 U. S. App. 434] 21: 225

One to whom bill of lading delivered as security for advances.

[76 Fed. 930; 48 U. S. App. 55] 22: 622

Government, for logs wrongfully cut on Indian reservation.

[78 Fed. 319; 49 U. S. App. 24] 24: 101

**What constitutes conversion.**

Sale of goods by one having a valid lien.

[82 Fed. 799; 49 U. S. App. 596] 27: 171

Disposition of securities by bailee.

[80 Fed. 500; 39 U. S. App. 619] 25: 596

Transfer of securities by trustee to one taking without notice of trust.

[89 Fed. 832; 60 U. S. App. 431] 32: 368

Carrier's nondelivery of goods.

[68 Fed. 380; 35 U. S. App. 369] 15: 479

**Defenses.**

Against expressman for goods, negligence in marking, as defense.

[79 Fed. 931; 51 U. S. App. 106] 25: 244

Subsequent mortgages in action by mortgagor against first mortgagee.

[94 Fed. 288] 36: 253

**Liability.**

Of receiver converting property, and using on railroad line.

[91 Fed. 209; 63 U. S. App. 389] 33: 453

Husband's liability for conversion by wife, see

Note, 12: 197

**Damages for.**

Measure of.

[79 Fed. 931; 51 U. S. App. 106] 25: 244

Measure of, when property subsequently recovered.

[85 Fed. 539; 56 U. S. App. 556] 29: 333

Amount recoverable by plaintiff where property not recovered.

[89 Fed. 907; 61 U. S. App. 69] 32: 406

For conversion of judgment when nominal.

[75 Fed. 959; 45 U. S. App. 79; 33 L. R. A. 250] 21: 581



**TROVER AND CONVERSION**—continued.

- For unlawful sale by chattel mortgage. [94 Fed. 288] 36: 253
- Measure of damages for conversion of logs by innocent purchasers from one warranting title. [70 Fed. 570; 27 U. S. App. 407] 17: 225
- When punitive may be awarded. [79 Fed. 931; 51 U. S. App. 106] 25: 244
- Interest allowed, though not asked for, where damages recovered less than asked for. [97 Fed. 150] 38: 89
- Interest at legal rate recoverable for wrongful conversion. Id.
- Amount equal to legal interest allowed for mining and converting ore, though damages sued for unliquidated. Id.
- Interest on royalties received from lessee for ore of third person converted by lessee. Id.

**TRUSTEE PROCESS.**

See GARNISHMENT.

**TRUSTS.**

See also ASSIGNMENT FOR BENEFIT OF CREDITORS; CHARITIES.

Trust Deeds and Trustees in Mortgage, see CHATTEL MORTGAGES; MORTGAGES; RAILROADS.

Trustees of Church Property, see RELIGIOUS SOCIETIES.

Repudiation of, as Affecting Laches, see EQUITY.

Combinations to Monopolize Trade, see MONOPOLIES.

For charitable purposes favored in equity.

[82 Fed. 806; 63 U. S. App. 149] 34: 676

Charitable trust not involved in controversy between rival church congregations as to possession of land. [70 Fed. 179; 36 U. S. App. 110] 17: 387

In favor of corporate creditors of solvent corporation in process of liquidation. [97 Fed. 906] 38: 546

Trust funds in insolvent bank, when preferred.

[88 Fed. 375; 60 U. S. App. 372] 31: 562

Presumption that possession of persons claiming land adversely to trustee rested on grant. [90 Fed. 182; 61 U. S. App. 548] 32: 564

Apportioning mining stock between beneficiaries, where not all parties.

[72 Fed. 301; 36 U. S. App. 419] 18: 573

Decree after trust executed by statute of uses.

[54 Fed. 437; 12 U. S. App. 206] 4: 414

Decree affecting, afterborn beneficiaries bound.

[53 Fed. 854; 9 U. S. App. 406] 4: 55

Benefit of trust in lands patented to city not extend to claim based on possession taken before patent issued. [100 Fed. 348] 40: 398

**Express trusts.**

Bequest of income for son "and his family," who beneficiaries.

[59 Fed. 923; 16 U. S. App. 679, 713] 8: 370

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[60 Fed. 824; 22 U. S. App. 83] 9: 273

As to real property, agreement to convey, upon payment of debt.

[48 Fed. 780; 2 U. S. App. 40] 1: 93

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[90 Fed. 182; 61 U. S. App. 548] 32: 564

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[79 Fed. 577; 49 U. S. App. 126] 25: 97

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[86 Fed. 235; 57 U. S. App. 526] 30: 1

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- Ability to follow proceeds of sale into particular fund as condition of constructive trust. [59 Fed. 913; 8 U. S. App. 496] 8: 365
- For stockholders, in stock placed under control of third persons. [66 Fed. 655; 31 U. S. App. 325] 13: 668
- Purchase of bank stock with own money at suggestion of another. [71 Fed. 153; 36 U. S. App. 234] 18: 18
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- Heirs of third person jointly interested, with notice of facts. Id.
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- Intervention of trustee not essential to validity of separation agreement. [97 Fed. 367] 38: 592
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- Heirs' right to contest right of trustees under will to execute trust. [68 Fed. 796; 30 U. S. App. 275] 15: 683
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- Exercising powers so as to derive personal advantage to principal's prejudice.  
[66 Fed. 655; 31 U. S. App. 325] 13: 668
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[54 Fed. 437; 12 U. S. App. 206] 4: 414
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- Presumption of corporate resolution for sale, from formal and regular executions of deed by trustees.  
[73 Fed. 945; 36 U. S. App. 702] 20: 122
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[58 Fed. 282; 17 U. S. App. 175] 7: 222
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- See also **BANKS**.
- Only so far as traceable.  
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[66 Fed. 843; 32 U. S. App. 164] 14: 140
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[57 Fed. 423; 13 U. S. App. 394] 6: 414

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[53 Fed. 348; 5 U. S. App. 230] 3: 556

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For drawing recognizances or warrants of commitment on adjournments. Id.

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[55 Fed. 373; 6 U. S. App. 377] 5: 140

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[76 Fed. 355; 40 U. S. App. 379] 22: 219

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[53 Fed. 348; 5 U. S. App. 230] 3: 556

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[76 Fed. 355; 40 U. S. App. 379] 22: 219

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[53 Fed. 348; 5 U. S. App. 230] 3: 556

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[72 Fed. 972; 41 U. S. App. 1] 19: 318

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[50 Fed. 818; 2 U. S. App. 158] 1: 693

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[70 Fed. 199; 36 U. S. App. 199] 17: 60

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[66 Fed. 895; 29 U. S. App. 522] 14: 162

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[97 Fed. 452] 38: 267

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[86 Fed. 79; 57 U. S. App. 261] 29: 586

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[65 Fed. 777; 27 U. S. App. 666] 13: 128  
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[85 Fed. 545; 56 U. S. App. 467] 29: 339



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Credit for unpaid disbursements or for unpaid services and fees of deputies.

[54 Fed. 812; 13 U. S. App. 166] 4: 589

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[58 Fed. 678; 15 U. S. App. 269] 7: 428

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Id.

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Id.

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[57 Fed. 423; 13 U. S. App. 394] 6: 414

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[58 Fed. 855; 20 U. S. App. 132] 7: 545

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[85 Fed. 547; 56 U. S. App. 461] 29: 342

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[65 Fed. 976; 26 U. S. App. 687] 13: 257

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[86 Fed. 79; 57 U. S. App. 261] 29: 586

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[65 Fed. 777; 27 U. S. App. 666] 13: 128

For serving bench warrants on persons in own custody.

[85 Fed. 547; 56 U. S. App. 461] 29: 342

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Id.

For transporting prisoner from place of arrest to office of magistrate issuing warrant.

Id.

For service of certificate of sentence and order modifying sentence.

[85 Fed. 545; 56 U. S. App. 467] 29: 339

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Id.

[86 Fed. 79; 57 U. S. App. 261] 29: 586

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Id.

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[65 Fed. 777; 27 U. S. App. 666] 13: 128

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[58 Fed. 678; 15 U. S. App. 269] 7: 428

## —Per diem.

For necessary attendance on Sunday.

[86 Fed. 79; 57 U. S. App. 261] 29: 586

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[65 Fed. 777; 27 U. S. App. 666] 13: 128

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[65 Fed. 976; 26 U. S. App. 687] 13: 257

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[58 Fed. 688; 5 U. S. App. 496] 7: 431

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Id.

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[85 Fed. 545; 56 U. S. App. 467] 29: 339

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[65 Fed. 777; 27 U. S. App. 666] 13: 128

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[86 Fed. 79; 57 U. S. App. 261] 29: 586

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[65 Fed. 777; 27 U. S. App. 666] 13: 128

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**USAGE.**

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**USES.**

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**USURY.**

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[69 Fed. 759; 32 U. S. App. 650] 16: 387

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[80 Fed. 655; 49 U. S. App. 295] 26: 70

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[87 Fed. 518; 59 U. S. App. 151] 31: 105

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[66 Fed. 827; 30 U. S. App. 163] 14: 133

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[74 Fed. 73; 42 U. S. App. 90] 20: 306

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[59 Fed. 837; 19 U. S. App. 455] 9: 320

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Statutory exemptions of building and loan associations from operation of usury laws, see Note, 36: 343

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[90 Fed. 373; 62 U. S. App. 38] 33: 107

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[77 Fed. 32; 40 U. S. App. 620] 23: 1

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[71 Fed. 58; 36 U. S. App. 255] 17: 570

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[76 Fed. 721; 40 U. S. App. 427] 23: 541

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[48 Fed. 271; 3 U. S. App. 7; 17 L. R. A. 622] 1: 62

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Id.

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[93 Fed. 759] 35: 534

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[90 Fed. 373; 62 U. S. App. 38] 33: 107

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[48 Fed. 271; 3 U. S. App. 7; 17 L. R. A. 622] 1: 62

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[68 Fed. 23; 32 U. S. App. 420] 15: 188

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[52 Fed. 74; 2 U. S. App. 403] 2: 626

**VENDOR AND PURCHASER.**

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[93 Fed. 533] 35: 414

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[80 Fed. 228; 42 U. S. App. 466] 25: 332

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Id.

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[74 Fed. 94; 36 U. S. App. 749] 20: 312

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[76 Fed. 624; 43 U. S. App. 490] 22: 430

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Agreement to sell "subject to the annual ground rent," and to execute "a good and sufficient title." [66 Fed. 853; 13 U. S. App. 733; 30 U. S. App. 78] 14: 146

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Insufficient acceptance of option for purchase. [100 Fed. 224] 40: 341

Acceptance by one of two owners in common of offer to purchase not binding. Id.

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The relation created by contract of purchaser to sell a portion of the land to third party. [76 Fed. 108; 40 U. S. App. 188] 22: 83

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When tender of money with demand for reconveyance of land sufficient. [73 Fed. 335; 34 U. S. App. 642] 19: 508

When tender of proper deed waived, tender of deed improperly drawn. [83 Fed. 619; 54 U. S. App. 416] 27: 634

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For purchaser's suspension of work on mining claim. [94 Fed. 960] 36: 581

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For fraud, delay after discovering facts, limitation of actions. [60 Fed. 242; 23 U. S. App. 154] 8: 600

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[76 Fed. 108; 40 U. S. App. 188] 22: 83

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[69 Fed. 451; 37 U. S. App. 305] 16: 296

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**Liability of vendor.**

On failure of title to lands sold under warranty deed.

[70 Fed. 303; 36 U. S. App. 136] 17: 401

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[100 Fed. 207] 40: 335

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[64 Fed. 80; 27 U. S. App. 421] 12: 48

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[86 Fed. 837; 59 U. S. App. 252] 30: 427

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[64 Fed. 679; 28 U. S. App. 134; 27 L. R. A. 131] 12: 384

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[76 Fed. 624; 43 U. S. App. 490] 22: 430

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[73 Fed. 945; 36 U. S. App. 702] 20: 122

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[76 Fed. 74; 43 U. S. App. 643; 34 L. R. A. 303] 22: 67
- Recital of covenants as to performance of certain acts by vendee. Id.
- Notice of intention to retain vendor's lien, what amounts to.  
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[63 Fed. 883; 27 U. S. App. 469] 11: 479
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[56 Fed. 104; 12 U. S. App. 351] 5: 432

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[83 Fed. 88; 48 U. S. App. 570; 39 L. R. A. 300] 27: 407

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[71 Fed. 481; 34 U. S. App. 404] 19: 88

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[49 Fed. 555; 6 U. S. App. 42] 1: 365

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[82 Fed. 857; 53 U. S. App. 542; 39 L. R. A. 711] 27: 147

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[75 Fed. 384; 44 U. S. App. 629] 21: 414

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[75 Fed. 379; 44 U. S. App. 566] 21: 409

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[75 Fed. 379; 44 U. S. App. 566] 21: 409

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[57 Fed. 673; 15 U. S. App. 173] 6: 495

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[74 Fed. 503; 41 U. S. App. 109] 20: 625

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[91 Fed. 955] 34: 138

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[93 Fed. 574; 63 U. S. App. 652] 35: 454

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[50 Fed. 557; 1 U. S. App. 161] 1: 576

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[92 Fed. 1008] 35: 149

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